

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 309 of 2010

- State Of Chhattisgarh, through SHO, P.S. Jarhagaon, District Bilaspur (CG)

---- Appellant

Versus

- Ashwani S/o Late Ajuram, aged about 31 years, R/o Vill. Birgahani, PS Jarhagaon, District Bilaspur (CG)

---- Respondent

For Appellant	:	Shri Adhiraj Surana, Dy. Govt. Advocate
For Respondent	:	Shri S.V. Purohit, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per P. Diwaker, J

09/02/2017

1. In this acquittal appeal the appellant State has assailed the judgment of acquittal dated 27.9.2007 passed by the Additional Sessions Judge, Mungeli, District Bilaspur (CG) in Sessions Trial No.41/2007 acquitting the respondent of the charges under Sections 450, 506 (B) & 376 of the Indian Penal Code (for short 'the IPC').
2. As per prosecution case, on 8.10.2006 the prosecutrix lodged a written complaint (Ex.P-5) to the effect that on 2.10.2006 when her grandmother had gone to the Well for cleaning utensils and she and her handicapped brother were only in the house, the accused came there, took her forcibly inside her room, bolted it from inside, made her lie on the bed, threatened her to keep silence else he would kill her and thereafter committed forcible

sexual intercourse with her after removing her clothes. It is further alleged that while she was being subjected to sexual intercourse by the accused, her grandmother reached there and seeing the accused mounted on her started scolding him on which he threatened her grandmother also of dire consequences. She has further stated that as her parents had gone out of village, therefore, the report could not be lodged on the same day and after the return of her parents, she is lodging the report. Based on this complaint, FIR (Ex.P-22) was registered on 8.10.2006 against the accused/respondent under Sections 376 & 506 of the IPC. The prosecutrix was medically examined on 9.10.2006 by Dr. Mahima Masih (PW-9) vide Ex.P-9 who did not notice any external or internal injury on her body and opined that no definite opinion could be given regarding sexual assault. Accused was medically examined by Dr. Amit Lal (PW-8) vide Ex.P-8 and was found capable of performing sexual intercourse.

3. On completion of investigation, charge sheet was filed against the accused for the offence punishable under Sections 450, 506 (B) & 376 of the IPC followed by framing of charges by the Court below under above sections. The prosecution in order to bring home the charges levelled against the accused examined as many as 17 witnesses. Statement of accused/respondent No.1 was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded false implication. He has examined one defence witness in support of his case.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, acquitted accused/respondent No.1 of the charges levelled against him. Hence this acquittal appeal by the State.
5. Learned counsel for the appellant submits that;
 - the trial Court has erred in law in acquitting the accused/respondent

solely on the ground of delay in lodging the report which has been satisfactorily explained by the prosecutrix stating that the report could not be lodged promptly as at the relevant time her parents were not in the village;

- statement of the prosecutrix finds support from the statements of Tulbai (PW-5), grandmother of prosecutrix, and therefore there is no reason to disbelieve her statement.

6. On the other hand, the counsel for the respondent has supported the impugned judgment.
7. We have heard learned counsel for the parties and perused the material available on record.
8. Prosecutrix (PW-1) in her Court statement has stated that on the date of incident when she was in the verandah of her house and her handicapped brother was sleeping on the cot, the accused came there, asked for water which she gave to him but instead of drinking water, he caught hold of her, took her inside the room, threw her on the bed, mounted on her, threatened her that if she raised alarm, he would kill her and thereafter committed forcible sexual intercourse with her after removing her underwear. She has further stated that while she was being subjected to sexual intercourse by the accused, her grandmother came there and seeing the accused mounted on her, when she threatened him of disclosing the said act of accused to everyone, the accused threatened her also of life. She has further stated that after committing the rape, the accused fled away from there. She has further stated that on the same day at about 7.00 p.m. they disclosed the incident to one Baburam who advised them to lodge the report after return of her parents. She has further stated that on 5th her elder brother Laxminarayan came to her house to whom she narrated the entire incident to him and then he

informed her parents. She has further stated that on return of his parents, she narrated the entire incident to them and the report was lodged.

9. Jethiya Bai (PW-2) did not support the prosecution case and as such declared hostile.
10. Baburam (PW-3) has stated that on the date of incident at about 7.00 p.m. when he returned home, he found the prosecutrix & Tulbai (PW-5) sitting in the verandah and they were weeping. Being asked, they disclosed that the accused has committed rape with the prosecutrix and then he advised them to lodge the report after return of her parents.
11. Jagesar (PW-3) did not support the prosecution case and as such declared hostile.
12. Tulbai (PW-5) is the grandmother of prosecutrix who reached on the spot while the incident was going on. She has stated that after cleaning the utensils when she reached home, she saw the accused committing sexual intercourse with the prosecutrix after inserting a piece of cloth in her mouth. She has further stated that when she told the accused that she will inform the villagers about his act then he threatened her that if she raised the voice, he would kill the prosecutrix and thereafter he ran away from the spot.
13. Ramkumari (PW-6) is a hear-say witness and she has not stated anything against the accused.
14. Laxmi Narayan Baghel (PW-7), brother of prosecutrix, has stated that having been informed by his sister (prosecutrix) and grandmother that the accused has committed rape with the prosecutrix, he contacted his parents over telephone and asked them to come back and after their return, the entire incident was disclosed to them.
15. Dr. Amit Lal (PW-8) is the person who medically examined the accused and opined that he is capable of performing sexual intercourse.

16. Dr. Mahima Masih (PW-9) had medically examined the prosecutrix vide Ex.P-9. She has stated that she did not notice any injury, external or internal, on the person of prosecutrix, except swelling in vagina. She has further stated that the prosecutrix was complaining pain in her vagina. According to this witness, no definite opinion regarding sexual assault could be given.
17. Dharmendra Kumar (PW-12) is the person who, at the instance of the prosecutrix, written the complaint of Ex.P-5. Vikas Tiwari (PW-14) is the Patwari who prepared the spot map of Ex.P-15. Manharan Yadav (PW-15) has not supported the prosecution case and turned hostile. T. Toppo (PW-17) is the investigating officer who conducted investigation in the matter and filed the charge sheet.
18. Minute examination of the evidence, particularly of the prosecutrix (PW-1), makes it clear that the story putforth by the prosecutrix that while she was in the house, the accused came there, forcibly took her inside her room and committed sexual intercourse with her against her wish, sounds quite unnatural and untrustworthy. It has come in evidence that the accused did not tie hands or legs of the prosecutrix, aged about 20 years, even then while being subjected to sexual intercourse she offered no resistance by biting or scratching the accused. It is surprising that she did not raise cries though had the opportunity as her mouth was not gagged by any means, which indicates that alleged intercourse was a peaceful affair. Furthermore, it is not the case of the prosecution that she was subjected to sexual intercourse by putting her or any person in whom she was interested in fear of death or hurt. This apart, there is evidence on record that while the sexual intercourse was going on between the accused and the prosecutrix, her grandmother Tulibai (PW-5) suddenly came over there and seen the accused committing sexual intercourse with the prosecutrix.

Thus the possibility of the prosecutrix making out a false case of rape against the accused on sudden approach of her grandmother (PW-5) cannot be also ruled out.

Medical report of prosecutrix also rejects the theory of rape because the doctor medically examining the prosecutrix did not notice any external or internal injury on the body of prosecutrix and has categorically stated that no definite opinion regarding sexual assault could be given. Most importantly, there is inordinate delay of six days in lodging FIR after the incident which has not been satisfactorily explained by the prosecution.

19. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Even otherwise, the settled position in case of an appeal against acquittal is that if two views are possible on the basis of evidence led by the prosecution, the one which favours the accused has to be taken into consideration and this is what is being done in this case.
20. Accordingly, the acquittal appeal preferred by the appellant-State is bereft of any substance, the same is liable to and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan/-