

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 17 of 2006

- Pintu @ Praveen Khanna, S/o Raj Kumar Khanna, aged about 24 years, R/o Shankar Nagar, Mahasamund, District-Mahasamund (CG)

---- Appellant

Versus

- State Of Chhattisgarh through P.S.Mahasamund, Distt. Mahasamund (CG)

---- Respondent

For Appellants	:	Shri Aditya Tiwari, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

And

CRA No. 41 Of 2006

1. Akash Chandrakar, S/o Shri Chagan Lal Chandrakar, aged about 26 years,
2. Pappu @ Lokesh Chandrakar, S/o Bal Ram Chandrakar, aged about 22 years.

Both resident of Shanker Nagar, Mahasamund, P.S. Mahasamund, District Mahasamund (CG)

---- Appellants

Vs

- State Of Chhattisgarh through the District Magistrate, Mahasamund, Distt. Mahasamund (CG)

---- Respondent

For Appellants	:	Shri Awadh Tripathi, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

12/09/2017

As these two appeals arise out of the common judgment of conviction and order of sentence dated 16.12.2005 passed by the Special Judge {Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989}, Raipur in Special S.T.No.105/2002, they are being disposed of by this common judgment.

By the judgment impugned appellants Akash Chandrakar and Pappu @ Lokesh stand convicted under Sections 376(2)(g), 342, 366 of IPC and sentenced to undergo RI for 10 years, fine of Rs.1000/-; RI for six months, fine of Rs.500/-; RI for five years, fine of Rs.1000/- and also convicted under Sections 3(1)(xi) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo RI for six months, fine of Rs.500/- and imprisonment for life and fine of Rs.1000/- with default stipulations respectively. Appellant Pintu @ Praveen has also been convicted under Sections 342, 366 of IPC and 3(1)(xi) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced as above. This apart he has been convicted under Section 376(2)(g) read with Section 109 of IPC and sentenced to undergo RI for 10 years and fine of Rs.1000/- with default stipulation.

02. Brief facts of the case are that on 23.12.2001 FIR (Ex.P/1) was lodged by the prosecutrix, a married lady of 25 years, alleging therein that her husband has deserted her and she is living with her father

along with her three children. On 22.12.2001 at about 7.30 pm while she was sleeping in her house along with her children, at about 9 pm she was awakened by her maternal grand-mother Radha saying that some boys have come to meet her (prosecutrix). She came out from her house and saw two boys standing near the motorcycle, one Akash Chandrakar and another Pintu Punjabi, who are known to her as often they used to come to her father for taking money on credit to play gamble. Accused Pintu told her that she is being called by Manish and when she refused to go with them, Pintu gagged her mouth, forcibly made her sit on the motorcycle being ridden by accused Akash. They took her to a lonely place in the house of Akash Chandrakar and bolted the door from inside. After some time another accused Pappu came there and after threatening her, Akash and Pappu committed forcible sexual intercourse with her. At night she somehow ran away from the said house, however, she was naked, she entered the house of one old person near temple who gave her *dhoti* to cover herself and thereafter, she went to vegetable market where she met four ladies and watchman Surendra Das whom she narrated the entire incident. Surendra Das offered her blanket and then next morning she lodged the report. Based on this FIR, offence under Sections 366, 376(2)(g), 342, 34 of IPC and Sections 3(1)(xii) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered against the accused/appellants. The prosecutrix was medically examined on 23.12.2001 vide Ex.P/12 by PW-9 Dr. Kiran Malhotra who noticed no mark of injury on her person and opined that no definite opinion could be given regarding recent sexual intercourse. After filing of charge sheet, the trial Court framed charge against the

accused persons 366/34, 342, 376(2)(g), alternatively 376(2)(g) read with 109 of IPC and Sections 3(1)(xii) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

03. So as to hold the accused persons guilty, the prosecution examined 12 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for appellants submit that the prosecutrix (PW-1) is not a trustworthy witness. When she was examined before the Court on 27.1.2003 she was declared hostile as not only she failed to identify the accused persons but also made no allegation against them and thereafter, her evidence was closed. However, after about six months on 9.7.2003 she was again examined in the Court and there she improved a lot and made allegations against the appellants. Learned counsel submit that the prosecutrix is a married lady of 25 years and considering her two contradictory statements, she is absolutely not a reliable witness. Even test identification parade has not been conducted in this case by the prosecution. This apart, medical report of the prosecutrix also does not support her version. They submit that in a case of such nature where the prosecutrix has been subjected to gang rape by the accused persons, under normal circumstances some

marks of injuries are found on her persons but as per medical evidence there was no mark of injury on her external or internal part of the body. More so, father of the prosecutrix PW-2 Dashrath has also not supported the prosecution case and that maternal grand-mother of the prosecutrix namely Radha has not been examined by the prosecution.

06. On the other hand, State counsel supporting the impugned judgment submits that conviction of the appellants is strictly in accordance with law and there is no infirmity in the same. She submits that there is no reason for this Court to disbelieve the statement of the prosecutrix made on 9.7.2003 wherein she has made specific allegation against the appellants.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 prosecutrix was first examined before the Court on 27.1.2003 where she has stated that she does not know the accused persons. On the date of incident two boys came to the house of her maternal grand-mother Radhabai and through her she was informed that she is being called by Manish and that both the boys took her on their motorcycle to Mahasamund, however, she does not know those boys. In the house in question she was subjected to rape by those two boys, who had consumed liquor. She has further stated that she came out naked from the said house, went to a nearby house, narrated the entire incident to one old person and then on the way she also met four ladies and one Surendra, whom she narrated the incident and then came to police station along with said Surendra and lodged the FIR. She has stated

that the place of occurrence was not shown by her to the police and the map Ex.P/2 was prepared by the police in the police station, which bears her signature. At this stage she was declared hostile by the prosecution. In the cross-examination by the prosecution, she further stated that she was not aware of the names of the accused persons. She has stated that earlier also she had come to the Court twice for her evidence but the same could not be recorded. She has categorically denied the suggestion that she was taken on motorcycle by accused Akash Chandrakar and Pintu and that she never lodged any such report. She has further stated that it is incorrect to say that she was subjected to intercourse by accused Akash Chandrakar and Pappu. In view of above, her cross-examination by the defence counsel remained NIL and therefore, she was discharged on 27.1.2003.

However, subsequently she made an application before the trial Court stating therein that she had made incorrect statement before the Court earlier and therefore, she may be examined again. Hence on 9.7.2003 she was again examined in the Court where she has stated that in her earlier evidence she made incorrect statement and then stated that she knows all the accused persons, on the date of incident accused Pintu and Akash came to the house of her maternal grandmother Radhabai and told her that they had come to return money of her (prosecutrix) father, however, her father was not there in the house. When she came out of the house, accused Pintu gagged her mouth and then accused Akash and Pintu forcibly made her sit on their motorcycle and took to the house of Akash at Mahasamund where she

was first raped by accused Akash and then by Pappu. During the course of intercourse they were also beating her. Thereafter she somehow ran away from the house naked and then met one old person who offered her some cloth to put on and a little ahead she met four ladies also and one watchman who offered her blanket and thereafter along with that watchman she went to police station and lodged the FIR. However, in her cross-examination there appears to be contradictions and omission from her diary statement and the FIR. She has further stated that at the time of commission of the rape she was also being beaten by the accused persons. However, as per her medical report no injury was found on her person.

09. PW-2 Dashrath, father of the prosecutrix, has not supported the prosecution case and has been declared hostile. PW-7 Birchi Dehri, Dy. S.P. did investigation and filed the charge sheet. PW-8 Chhabiram Diwan, Patwari, prepared the spot map Ex.P/11. PW-9 Dr. Kiran Malhotra medically examined the prosecutrix on 23.12.2001 vide Ex.P/12 and did not notice any injury, internal or external, on her person. In her opinion, the prosecutrix was habitual to sexual intercourse and no definite opinion could be given regarding recent sexual intercourse with her. PW-10 Dr. OP Dubey medically examined the accused persons and found them capable of performing sexual intercourse vide Ex.P/13 & P/14. PW-11 DK Sharma helped in the investigation. PW-12 Tejkumar Sahu, Sapranch, issued caste certificate in favour of the prosecutrix.

10. Defence witnesses (DW-1 and DW-2) have stated that on the date of incident the accused persons were not present in the house.

11. Close scrutiny of the evidence makes it clear that in the report lodged on 23.12.2001 by the prosecutrix she has stated that on 22.12.2001 she was subjected to forcible sexual intercourse by the accused/appellants. Though the said report was lodged by the prosecutrix naming all the accused/appellants, however, when she was examined in the Court on 27.1.2003 she did not support the prosecution case, even denied the identification of the accused/appellants and hence was declared hostile. It is only on her subsequent examination after about six months on 9.7.2003 in the Court pursuant to her application in this regard that she made allegations against the appellants regarding commission of rape with her. This time she stated that she was also being beaten by the accused/appellants during commission of rape and that her bangles too got broken. In her subsequent statement also there are material contradictions and omissions from that of her diary statement as well as FIR. It is noteworthy to point out here that she was medically examined on 23.12.2001 vide Ex.P/12 by PW-9 Dr. Kiran Malhotra but no marks of injury, either external or internal, on her person was found and further there was no sign of recent sexual intercourse. This apart, her father PW-2 Dashrath has also not supported the prosecution case.

12. True it is that ordinarily the evidence of the prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if her evidence is reliable, no corroboration is necessary. While rape causes the greatest distress and humiliation to the victim, a false allegation of rape causes equal distress, humiliation and damage to the accused as

well. The accused must also be protected against the possibility of false implication. Indisputably, in a case of rape, the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.

13. In State of ***Maharashtra Vs. Chandraprakash Kewalchand Jain AIR 1990 SC 658***, the Supreme Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under :-

“A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to

illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

14. In the matter of ***Raja Vs. State of Karnataka*** reported in **(2016) 10 SCC 506**, the Supreme Court held as under:

24. This Court in Raju (Raju and Others Vs. State of Madhya Pradesh (2008) 15 SCC 133), while reiterating that the evidence of the prosecutrix in cases of rape, molestation and other physical outrages is to be construed to be that of an injured witness so much so that no corroboration is necessary, ruled that an accused must also be protected against the possibility of false implication. It was underlined that the testimony of the victim in such cases, though commands great weight but the same, cannot necessarily be universally and mechanically accepted to be free in all circumstances from embellishment and exaggeration. It was ruled that the presumption of

absence of consent of the victim, where sexual intercourse by the accused is proved as contemplated in [Section 114A](#) of the Evidence Act, was extremely restricted in its application compared to the sweep and ambit of the presumption under [Sections 113A](#) and [113B](#) of the Indian Evidence Act. It was explicated that insofar as the allegation of rape is concerned, the evidence of the prosecutrix must be examined as that of a injured witness whose presence at the spot is probable but it can never be presumed that her statement should always without exception, be taken as gospel truth.

The essence of this verdict which has stood the test of time proclaims that though generally the testimony of a victim of rape or non- consensual physical assault ought to be accepted as true and unblemished, it would still be subject to judicial scrutiny lest a casual, routine and automatic acceptance thereof results in unwarranted conviction of the person charged.”

15. Thus, keeping in mind the aforesaid principles of law, close scrutiny of the entire evidence, particularly of the prosecutrix, the contradictions and omissions therein, her conduct during the alleged offence and subsequent thereto, the medical evidence which is at complete variance with her testimony, raises a serious doubt as to the veracity of the version of the prosecutrix and smacks of false implication of the accused/appellants. There is no conclusive evidence to show that she was wrongfully confined by the appellants or abducted to have sexual intercourse with her. Being so, we are of the opinion that the prosecution has miserably failed to prove its case

against the appellants beyond all reasonable doubt under Sections 376(2)(g), 342, 366 of IPC. As from the evidence discussed above it stands established that the complicity of the appellants in the crime in question itself is shrouded with serious doubt, the question of their conviction under Section 3(1)(xi) and 3(2)(v) of the Act, 1989 does not arise. As such, the trial Court was not justified in holding them guilty of the offences as mentioned above. They deserve to be acquitted of all the charges leveled against them by extending them benefit of doubt.

16. In the result, the appeals are allowed. The impugned judgment is hereby set aside and the appellants are acquitted of all the charges leveled against them by giving them benefit of doubt. They are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.P. Sharma)
Judge