

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 387 of 2012**

1. Ajay Kumar, son of Dukharam Gayar, aged about 20 years, occupation Labour, resident of village Pandripani, P.S. Bagicha, District Jashpur (C.G).
3. Sursen Ram Gayar, S/o Lakhuram Gayar, occupation Labour , R/o Village Pandripani , P.S. Bagicha , Distt. Jashpur C.G. --- **Appellants**

Versus

- State of Chhattisgarh Through - Sho., Bagicha , Distt. Jashpur C.G.
--- **Respondent**

For the appellant	:	Mr. A. K. Prasad, Advocate
For the Respondent	:	Mr. Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Judgment/Order on Board****10.07.2017**

1. This appeal is against the judgment/order dated 23.12.2011 passed by the learned Special Judge [constituted under SC/ST (prevention of Atrocities) Act], Jashpur in Special Trial Trial No.05/2010 whereby the appellants were convicted and sentenced as under :

U/s 376 (2)(g) of IPC : R.I.for 10 years each and fine of Rs.1000/-, in default of payment of fine, additional R.I., for 3 months

U/s 323 / 34 of IPC : Fine of Rs.500/- each, in default of payment of fine, additional R.I., for one month

2. As per the prosecution case, on 18.10.2009, the victim at about 11 o' clock after taking her meals was ready to go to her brother-in-law (Jeth) and sister-in-law to take sleep in the night in their house as her husband was lodged in jail. At that time, both the appellants entered into her house caught

hold of her and dragged her to a field by closing her mouth and thereafter she was assaulted by hands and fists. Subsequently, she was subjected to forcible rape by both the appellants one by one and she became unconscious. Thereafter on hearing shrieks, her brother-in-law and sister-in-law came and took her to their house and on the very next day i.e., 19.10.2009 a report was made vide Ex.P-17. During investigation, the prosecution recorded the statement of victim and got herself examined and also recorded the statements of various witnesses. The charge sheet was filed u/s 450, 323 read with section 34 IPC and 376(2)(g) of IPC and in the alternative u/s 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. During the course of trial the accused/appellants abjured guilt and claimed to be tried. The prosecution on its behalf had examined as many as 12 witnesses including the victim P.W.1, Dr. Smt. V. Bakhla (P.W.1); one Rohit Das (P.W.3) and the Sarpanch of Village Virendra Kujur (P.W.4), and the person who rescued the victim namely smt. Kamla Bai (P.W.8). The trial Court after evaluating the entire evidence, facts and circumstances of the case acquitted the appellants u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as also u/s 450 of IPC as the case is not made out, but convicted and sentenced the appellants u/ss 376(2)(g) and 323/34 of IPC. Hence this appeal.
4. Learned Counsel for the Appellants would submit that in the instant case the appellants have been falsely implicated as some old enmity was existing with the husband of the victim

for possession of particular land in the village. It is stated that the victim herself fell down because of heavy intoxication and sustained the injury. It is further stated that only bald allegations have been attributed against the appellants which have not been corroborated by any other evidence, therefore, the appellants deserve to be acquitted in this case.

5. Per contra, learned State Counsel opposes the submissions made by the appellants and submits that the order of the court below is well merited which do not call for any interference by this Court.
6. Perused the statements and the documents exhibited by the prosecution in this case. The victim was examined as P.W.7. The FIR in this case is marked as Ex.P-17 which was lodged by the victim on 19.10.2009 at about 12.30 p.m., relating to the incident of 18.10.2010 at about 11 o' clock. The FIR would show that both the appellants have been named therein. The statement of victim (P.W.8) would show that she stated that she knew both the appellants Ajay Kumar and Sursen Ram. Narrating the incident, it is stated that at village Pandripani, she was in her house which is situated at one side of the village. Thereafter both the appellants entered into the house, caught hold of her and dragged her to a nearby field. It is stated that after taking her to a nearby field, she was assaulted on her face and other parts. Thereafter, initially appellant Ajay committed rape and then Sursen committed rape on her. Subsequently she became unconscious and after 1 ½ hours she gained conscious and started crying. At that time, hearing the voice, her sister-in-

law (Jethani) Kamla Bai and brother-in-law (Jeth) Udit Narayan came to the spot and the entire incident was narrated. Thereafter, on the next day a meeting was held in the village wherein 20 persons were present. The suggestion which was given to her that at the relevant time, she was heavily drunken was denied.

7. P.W.1 Dr. Smt. V. Bakhla has affirmed the fact of injuries on the face of victim; on both the cheeks, on the neck, over the left eye and wrist. She has stated that as per Ex.P-1, the MLC report the injuries were simple in nature and she was subjected to rape within 2 to 3 days. It is stated that the victim was examined on 19.10.2009 at about 4.30 p.m. The MLC report Ex.P-1(A) also suggests that the injuries were resulting in struggle and affirmed that the sexual intercourse was committed on her before 2-3 days. The FSL report filed as Ex.P-16 affirmed the presence of Spermatozoa on her petty coat which was seized from the victim and the vaginal side of C-1 and C-2 apart from the under-wears of the appellants Ajay Kumar and Sursen also shows the Spermatozoa.
8. The incident appears to have been disclosed to the villagers. P.W.3 Rohit Das had stated that after a date of incident, Ujitram who is relative to the victim had stated that her daughter-in-law (*Bahu*) was subjected to assault and rape by the appellants. The same fact was also disclosed by Ujit Ram in village meeting. The said fact is also corroborated by P.W.4 Virendra Kujur who was Sarpanch of village and P.W.4 has also proved the seizure of Petticoat, Sari etc. The Sarpanch (P.W.4) stated that after the incident i.e., on the

next day Ujit Narayan had disclosed the fact that the appellants have committed forcible sexual intercourse for which a meeting was called in the village and the appellants were also sitting in such meeting for which a Panchnama Ex.P-4 was prepared. The Panchnama of village meeting discloses the fact that the complaint made by the victim that she was subjected to rape by the appellants on 18.10.2009 was discussed in the meeting. The place of incident is shown in the Map Ex.P.20 which is proved by P.W.12 the Investigating Officer. A perusal of such map would show that the house is separately situated where-from the victim was dragged into the agricultural field and the rape was committed.

9. Considering the statements of the witnesses, it appears that the factum of rape is corroborated by the Dr. Smt. V. Bakhla (P.W.1) and the FSL report also shows the presence of spermatozoa which also corroborates that immediately after the incident, the report was made and on the next date, the meeting was held in the village. All the chain of circumstances of the incident would lead to show that the prosecutrix was subjected to rape.
10. In the statement of accused u/s 313 of Cr.P.C., no plausible explanation has been given except the denial. Only it is stated that since there has been some dispute with the husband of victim, they have been falsely inculpated. On perusal of the entire statements especially the statement of victim which is further corroborated by the Doctor, it appears nothing has come on record to demolish the incident. Further the way the offence has been committed by two

persons, the same has been properly explained and narrated by the prosecutrix and the reading of statement do not show that false allegations have been attributed.

11. The Supreme Court in case of *Aslam vs. State of U.P (2014) 13 SCC 350* has reiterated the law laid down in case of State of *Punjab Vs. Gurmit Singh (1996) 2 SCC 384*, which is reproduced herein below:

“8..... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested

in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of the rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.

19. In the contest of Indian culture, a woman victim of sexual aggression would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the

prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.”

(emphasis in original)

12. Further more the Supreme Court in case of ***Mukesh Vs. State of Chhattisgarh, (2014) 10 SCC 327*** has held that even in absence of corroborative evidence, the sole testimony of the witness (prosecutrix) is sufficient to establish the commission of rape.
13. The Court has further reiterated the view taken in case of ***Narender Kumar Vs. State (NCT of Delhi) (2012) 7 SCC 171*** and held as under :-

“30.....conviction can be based on sole testimony of the prosecutrix provided it lends assurance to her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected.

31. The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtues/unchaste woman that itself cannot be a determinative factor and the court

is required to adjudicate whether the accused committed rape on the victim the occasion complained of.”

14. Applying the aforesaid principles and after evaluating the statements of witnesses as a whole, I am of the considered opinion that no ground is made out warranting interference in the impugned judgment of conviction and sentence awarded to the appellants.
15. In view of the forgoing discussions, the appeal has no merit and is dismissed accordingly.

**Sd/-
GOUTAM BHADURI
JUDGE**