

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 657 of 2017

(Arising out of judgment of Acquittal dated 18.01.2017 passed by learned Addl. Sessions Judge (FTC), Surguja (Ambikapur) in Special Sessions Case (POCSO) No. 01/2015 (State of Chhattisgarh Vs. Dharmendra Bada)

State of Chhattisgarh through the Station House Officer,
Police Station Sitapur, District Surguja, Chhattisgarh. ---
Petitioner

Versus

Dharmendra Bada S/o Late Ghasiram Uraon, Aged About 21
Years R/o Village Jamdhodhi, Police Station Sitapur, District
Surguja, Chhattisgarh. --- **Respondent**

For the Petitioner	:	Mr. Anupam Dubey, Dy.G.A.
For non-applicant	:	Mr. Jitendra Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

31.10.2017

1. Heard on I.A. No. 01/2017, an application for condonation of delay.
2. On due consideration of the grounds mentioned in the application, the delay of 22 days in filing the appeal is condoned. Accordingly, I.A. No. 01/2017 is allowed.
3. Leave to appeal is granted.
4. As per the prosecution case, on 24.11.2016 the victim went for tuition and while she was coming back at about 8 o'clock in the night, the accused all of a sudden closed her mouth and caught hold of her hand and in order to outrage her modesty, tried to drag her. Thereafter, when she had bitten his hand and raised alarm, the accused fled away thereby the offence is committed.

5. After the investigation, the charge sheet was filed and the learned court below has acquitted the accused by holding the fact that the case of the prosecution suffers from doubt.
6. Counsel for the State would submit that the court below has wrongly appreciated the evidence of PW-2 wherein she has categorically stated about the incident, therefore, the order of acquittal suffers from illegality and it is required to be set aside.
7. Perused the documents and the records of the court below. The victim in this case was examined as PW-2. She has admitted the fact in her statement that few days before the incident the father of accused was murdered, for which, the family members of the victim were arrested and were sent to jail which is also admitted by the mother PW-1 Chandni thereby it can be inferred that the enmity was existing between the two families of accused and the victim. The statement of victim PW-2 would further show that before the alleged incident, the accused has never restrained her nor he has committed any indecent act with the victim and has admitted that the name of the accused was added at the instance of one Sainath. She has further admitted that when the police had brought her to the Court for adducing evidence, she had given statements accordingly as tutored by the police. The victim has further deposed in her court statement that she had bitten the hand of accused. However, the arrest memo does not support the same. In the arrest memo nothing sort of act like nature of injury has been shown. This fact also does not find place in the statement recorded u/s 164 of Cr.PC and it is also not supported by PW-1 Chandani, the mother of the victim.

8. Though the Investigating Officer PW-7 Nohar Sai has deposed in para 4 of his cross examination that the victim has stated in her report (Ex.P-1) that she had bitten the hand of accused but in para 5 of the cross examination, this witness (P.W.7) has admitted the fact that at the time of recording the statement of Khilip Sai (P.W.4) who is uncle of victim, he has not stated this fact of biting the hand of accused by the victim and had it been disclosed by Khilip Sai, this witness would have recorded the same. Therefore, it is clear that P.W.7 has also corroborated the fact that nothing sort of like nature of injury was disclosed.
9. The statement of victim PW-2 would further show that on the date of incident after attending the tuition, she came back to her house along with her friends Suganthi, Jairaj & Santa who were also residents of near by place. Similarly, her mother Chandini (P.W.1) has also admitted that on the date of incident, Suganthi, Jairaj and Santa had come to her house to drop her daughter (P.W.2). In such situation, the version of victim that while coming back to the home after attending the tuition the accused restrained her on the way and pressed her mouth and neck and she gave a biting on the hand of accused cannot be believed. Though the friends of victim namely Jayraj, Santa and Suganthi who accompanied the victim were the eye-witnesses to the incident but their statements were not recorded by the Police u/s 161 Cr.P.C., which leads to show that the evidence of independent witnesses were avoided.
10. Further doubt has been created in respect of the date of incident as in the statement of victim recorded u/s 161 Cr.P.C (Ex.- P/5), the date has been reported to be

10.12.2014 whereas in the FIR Ex. P/1, the date of incident is reported to be 24.11.2014 and the statement (Ex.P-5) u/s 161 Cr.PC would show that two incidents were reported, one is of 24.11.2014 and the other is of 10.12.2014. The statements of independent eye-witnesses have not been recorded who were the best witnesses available to the prosecution. No plausible explanation has been given about the delay in lodging the FIR as the alleged incident is stated to be of 24.11.2014 whereas the FIR was of 11.12.2014. The previous enmity between the two families of accused and victim is established by the evidence of victim itself and that of her mother. Consequently, the trial court did not believe the statement of prosecution witnesses.

11. After overall appreciation of the statements and evidence available on record, I do not find any reason to re-appreciate such finding of fact and the evidence of prosecution witnesses warranting interference in the impugned judgment dated 18.01.2017 passed by the trial Court.
12. In the result, the petition has no merit and is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE