

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 131 of 1999**

- Phagulal Satnami S/o Amar Singh Satnami, aged 26 years, R/o village Khamaria (Lavan), Police Station Kasdol, District Raipur (C.G.)

---- Appellant**Versus**

- State of M.P. (Now Chhattisgarh) Through : Station House Officer, Police Station Kasdol, District Raipur (C.G.)

---- Respondent

For Appellant	-	Shri C.R. Sahu, Advocate.
For Respondent	-	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker**Judgment On Board****27/06/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 21.12.1998 passed by II Additional Sessions Judge, Baloda Bazar in Sessions Trial No.356/98 convicting the accused/appellant under Sections 450, 376 IPC & sentencing him to undergo R.I. for 5 years with fine of Rs.500/- and R.I. for seven years with fine of Rs.1000/- plus default stipulation respectively.

02. As per the prosecution case, on 31.08.1998 FIR (Ex.P/1) was lodged by the prosecutrix (PW/1), married lady aged about 30 years, alleging in it that her husband is deaf and dumb and that she has three children. According to her, on 28.08.1998 at about 12.00 in the mid night, accused/appellant entered her house, kept her minor child on the floor who was sleeping beside her on cot and committed forcible

sexual intercourse with her. She has also stated that while the accused/appellant was committing offence, her husband was sleeping on a cot adjacent to her. Based on this FIR (Ex.P/1), offence under Sections 450 and 376 IPC was registered against the accused/appellant. The prosecutrix was medically examined vide Ex.P/10 on 01.09.1998 by Dr. (Mrs.) Rajashri Devdhar (PW/8), however, no injury was found on her body and it has been opined by the Doctor that no definite opinion can be given regarding commission of rape. In the incident, one saree, petticoat of the prosecutrix and underwear of the accused/appellant were seized, the same were subjected to chemical examination and as per FSL report (Ex.P/15), no spermatozoa was found on the same. The accused/appellant was also medically examined by Dr. K.L. Banjare (PW/7) vide Ex.P/8 on 01.09.1998 and found him to be capable of performing sexual intercourse.

03. After filing of the charge sheet, the trial Court has framed the charge under Sections 450 and 376 IPC against the accused/appellant.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits as under:

- That the accused/appellant has been falsely implicated in the crime in question.
- That very improbable story has been put forth by the prosecution wherein the prosecutrix was subjected to rape and on a cot adjacent to her, her husband was sleeping. It has been further argued that it is a case of consent.
- That the statement of the prosecutrix (PW/1) is not reliable and trustworthy.
- That the medical report of the prosecutrix also does not support the prosecution case.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance law and there is no infirmity in the same.

08. I have heard learned counsel for the parties and perused the material available on record.

09. Prosecutrix (PW/1) has stated that on the fateful night she was sleeping along with her three children and there was no light on that day. At midnight, the accused/appellant entered her house, gagged her mouth with his full pant and committed sexual intercourse with her. While the act was being committed, all of a sudden, light came and then she identified the accused/appellant. According to her, her husband was sleeping on a cot adjacent to her but as he is deaf and dumb by birth, he realises the things on being touched and gesture. She has further stated that she lodged the report on second day, whereas the FIR is dated 31.08.1998. She has also stated that about one hour she was subjected to physical relation by the accused/appellant. She admits that she

neither offered any protest nor objected the accused/appellant for committing offence. She further admits that her hands were free, her breast were pressed but yet she did not raise any protest there-against.

10. Dr. (Smt.) Rajashree Devdhar (PW/8) medically examined the prosecutrix on 01.09.1998 vide Ex.P/10. She did not notice any external injury on her body and opined that no definite opinion can be given regarding rape.

11. Dr. K.L. Banjare (PW/7) medically examined the accused/appellant vide Ex.P/8 and found him to be capable of performing sexual intercourse.

12. Ratnesh Mishra (PW/11) - Investigating Officer has duly supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that though the prosecutrix has levelled allegation of rape against the accused/appellant but she is not consistent while deposing. Even otherwise very improbable story has been put forth by the prosecution where it is alleged that the prosecutrix was subjected to rape by the accused/appellant for one hour that too in presence of her husband who was sleeping on a cot adjacent to her but yet she did not resist and protest there-against. According to the prosecutrix, at midnight the accused/appellant entered her house, kept her minor children on floor who was sleeping just beside her and satiated his lust for one hour. While the act was being committed, husband of the prosecutrix was sleeping on a cot adjacent to her and as soon as the light came, she identified the accused/appellant. Her none resistance to the act of the appellant clearly shows that she was a consenting party. The evidence of prosecutrix does not inspire full confidence of this Court. Further,

medical report (Ex.P/10) does not support the prosecution according to which no injury was found on any part of her body and no definite opinion was given regarding commission of rape. That apart, in the FSL report (Ex.P/15), no spermatozoa was found on the clothes of the prosecutrix and the accused/appellant. Taking into consideration all the aforesaid facts, it is crystal clear that the prosecutrix was a consenting party to the act of the accused/appellant and the possibility of his being falsely implicated in the crime in question cannot be ruled out.

14. The findings recorded by the Court below thus appear to be beyond proper appreciation of the evidence adduced by the prosecution which cannot have affirmation from this Court. Since, the prosecution has failed on all fronts to prove its case beyond shadow of doubts, the benefit, of course, has to go to the accused/appellant. The appeal is thus allowed, judgment impugned is hereby set aside and the accused/appellant stands acquitted of the charges levelled against him. As the appellant is reported to be on bail, his bail bonds stand discharged.

15. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)

JUDGE