

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2775 of 1999

- Bajjnath Thakur, S/o Satyanarayan Thakur, age 50 years, occupation Barbar, R/o Village-Jambwantpur, PS-Ramanujganj, District-Surguja (MP)

---- Appellant

Versus

- The State Of Madhya Pradesh (Now Chhattisgarh), through P.S. Ramanujganj, Distt. Surguja (MP)

---- Respondent

For Appellant	:	Shri S.R. Sinha, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

08/02/2018

This appeal arises out of the judgment of conviction and order of sentence dated 30.9.1999 passed by the First Additional Sessions Judge, Ambikapur, Distt. Surguja in S.T.No.233/1998 convicting the accused/appellant under Section 376/511 of IPC and sentencing him to undergo RI for five years.

02. As per prosecution case, on 1.6.1998 at 5.30 pm FIR (Ex.P/3) was lodged by PW-2 prosecutrix, a married lady of 36 years, alleging in it that on 30.5.1998 at about 9 pm when she was in her house along with her two sons and her husband had gone to his workplace, the appellant came there and after gagging her mouth, took her near veranda and after upturning her sari made an attempt to ravish her.

However, upon hearing her cries, her elder son Vikram came there and thereafter the appellant fled from the spot. She has categorically stated that the appellant could not perform bad work with her. Based on this, FIR was registered under Section 376/511 of IPC against the appellant. PW-1 Dr. Bhojraj Sharma medically examined the accused/appellant and found him capable of performing sexual intercourse vide Ex.P/1. He has also identified the signature of the lady doctor Smt. Shobha Khare who did medical examination of the prosecutrix. While framing charge, the trial Judge framed charge under Section 376/511 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 4 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. In his defence, he 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 accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- That the appellant has been falsely implicated in this offence.
- That the prosecutrix does not appear to be trustworthy. As per FIR and statement u/s 161 of CrPC of the prosecutrix, the appellant merely made an attempt to outrage her modesty

whereas while improving in the Court she has stated that she was subjected to rape by the appellant.

- That according to the prosecutrix at the time of incident her son PW-3 Vikramaditya, aged 14 years, was playing in the nearby room along with his brother and as such, it appears highly improbable that the appellant would do such an act in presence of sons of the prosecutrix.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

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

08. PW-1 Dr. Bhojraj Sharma medically examined the appellant vide Ex.P/1 and found him capable of performing sexual intercourse. He has also identified the signature of Dr. Smt. Shobha Khare who did medical examination of the prosecutrix.

09. PW-2 prosecutrix has stated that when she was in her room whereas her two sons were in another room, the accused/appellant reached there and outraged her modesty. She has clarified that the act of the appellant was such as it happens between the husband and wife. In para-5 she has stated that her elder son is taller than her and at the relevant time, her sons were studying in the adjacent room. She states that after appellant entering her room when she asked him as to why he has come, he said to her “she is more beautiful than his wife”

and upon raising her cries when her elder son reached there, the appellant fled from the spot. When she was confronted with her diary statement and FIR, she states that she did inform the police about commission of the entire offence and if the same is not recorded she cannot tell the reason. From para-13 of her evidence it appears that there was some land dispute between the appellant and her family and that her husband had taken Rs.4500/- from the appellant.

10. PW-3 Vikramaditya, son of the prosecutrix, has stated that upon hearing cries of his mother when he reached there, he saw the appellant who asked him to keep quiet and then fled from there. He also admits land dispute between the appellant and his family and states that his father had taken Rs.5000/- from the appellant. PW-4 Satish Mishra, investigating officer, has supported the prosecution case.

11. DW-1 Kanchan Thakur states about false implication of the appellant by the police in conspiracy with the prosecutrix and against that he had made an application to the Superintendent of Police, Ambikapur. DW-2 Ravindra Tiwari states about land dispute between the appellant and husband of the prosecutrix.

12. Close scrutiny of the evidence makes it clear that initially at the time of lodging FIR on 1.6.1998 the prosecutrix (PW-2) alleged that the appellant after entering into her room, gagged her mouth and made an attempt to commit rape with her. However, in the Court she states that the appellant committed forcible sexual intercourse with her. This improvement on material point by the prosecutrix creates a serious doubt as to the veracity of her version. In examination-in-chief she

admits that whatever she had disclosed to the police was reduced into writing in FIR (Ex.P/3), however, in cross-examination she states that though she had informed the police about commission of rape by the appellant with her but it was not mentioned in the FIR. She has also denied the contents of her diary statement wherein she has stated that the appellant made an attempt to commit rape with her, however, on her raising alarm and her son Vikram coming to her rescue, the appellant fled from there. Thus, considering the overall statement of the prosecutrix, which runs contrary to the contents of the FIR and her statement under Section 161 of CrPC on material points, the possibility of false implication of the appellant cannot be ruled out. This possibility of false implication further gets strengthened from the fact as has come in the evidence of the prosecutrix (PW-2), Vikramaditya (PW-3) & Ravindra Tiwari (DW-2) that there is land dispute between the appellant and the husband of the prosecutrix.

13. 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 the offence of sexual assault causes the greatest distress and humiliation to the victim, a false allegation thereof 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 such cases, 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.

14. Thus, keeping in mind the aforesaid principles of law, on close scrutiny of the entire evidence, in particular that of the prosecutrix, it emerges that the prosecution has not been able to prove beyond reasonable doubt that appellant had made any attempt to commit rape with the prosecutrix. Being so, the appellant cannot be held guilty of any offence and he deserves to be acquitted of the charge by giving him benefit of doubt.

15. In the result, the appeal is allowed. The impugned judgment is set aside and the appellant is acquitted of the charge under Section 376/511 of IPC by giving him benefit of doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/

(Pritinker Diwaker)
Judge