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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 31/08/2018****Judgment Delivered on : 07/09/2018****Criminal Appeal No. 146 of 2015**

Umashankar Gond S/o late Kusum Singh, Caste Gond, Aged About 21 Years approx, R/o Village - Bishunpur, Baigapara, P.S. Soorajpur, Civil & Revenue District Soorajpur, Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh through Station House Officer, Soorajpur, Civil & Revenue District Soorajpur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Vipra Sen Agrawal, Advocate.
For Respondent/ State	:	Shri Ashok Swarnakar, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV JUDGMENT**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 9.12.2014 passed by Learned First Additional District & Sessions Judge, Surajpur, District Surajpur, Chhattisgarh in Sessions Trial No. 28 of 2014, whereby and whereunder the learned First Additional Sessions Judge has convicted the appellant for the offence under Section 376 of the IPC and sentenced him to undergo rigorous imprisonment for 7 years and to pay fine of ₹100/-, in default of payment of fine, to further undergo additional rigorous imprisonment for 7 days.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on the date of incident i.e. 16.10.2013, the prosecutrix had been to the house of her sister-in-law and was coming back, then the appellant caught hold her, took her by dragging to an agricultural field and then raped her. Subsequently, the appellant also threatened to kill her and assaulted her causing injuries on her body and thereafter, the appellant fled from the spot, on arrival of the witnesses. The FIR was lodged. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court.

(5) During trial, the Court below framed the charge under Section 376 of the IPC. The prosecution examined eight witnesses to prove the guilt of the appellant. No witness was examined in defence. Statement of the appellant was recorded under Section 313 of the Cr.P.C. wherein the appellant denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

(6) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that the conviction of the appellant for the offence under Section 376 of the

IPC is bad in law which is not supported with cogent, relevant and reliable evidence. The prosecution has failed to prove its case beyond reasonable doubt. There are many contradictions, omissions and improvements in the statements of the prosecution witnesses, which affect the reliability of the prosecution evidence. According to admissions made by some witnesses, it is clear that there had been some kind of affair between the appellant and the prosecutrix and it was disclosed to her husband because of which, a false FIR was lodged and the appellant has been prosecuted in this case. Hence, there are various shortcomings in the case of the prosecution because of which, none of the witnesses should have been treated as reliable to convict the appellant for the offence for which he has been convicted. Hence, it is prayed that on these grounds, the appeal may be allowed and the appellant may be acquitted of the charges framed against him.

(9) Per contra, learned counsel for the Respondent/ State opposed the prayer and submissions. It is submitted that the prosecution has proved its case beyond reasonable doubt. The prosecutrix has made a clear statement against the appellant, which has presumptive value under Section 114A of the Evidence Act. The omissions and contradictions are immaterial, the same cannot be made a ground to discard the statement given by the prosecutrix, which comes beyond reasonable doubt. Hence, no ground is made out for interference in the impugned judgment.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) The prosecutrix (PW-1) is the main witness in this case. She has stated that on the date of incident she was on the way to her house, then the appellant caught hold her and by dragging took her to an agricultural field where she was forcibly raped her, regarding which she lodged FIR Ex. P/1. In cross-examination, she admitted that she filed a written complaint after 6-7 days from the date of incident as the matter could not be settled in the village. Sukhmaniya (PW-2) is the witness, who arrived immediately after the incident on the spot and saw the prosecutrix in disrobed condition, then she clothed her. It was at that time the prosecutrix informed her that the appellant had raped her. In cross-examination, this statement has remained unrebutted.

(12) Gajroop Singh (PW-8) is the husband of the prosecutrix who has not supported the case of the prosecution and declared hostile by the prosecution. In cross-examination, he admitted that his wife had gone away without informing him and that is why, when she came back, this witness has thrashed her and then the prosecutrix has lodged FIR. What would be the effect of this statement shall be examined in further discussion.

(13) The appellant's counsel has relied upon the statement of Heeralal (PW-4). This witness was examined by the prosecution for proving the procedure of memorandum and seizure for which he declared hostile. But he admitted in cross-examination that the appellant and the prosecutrix had eloped from the village and they came back after a week. Thereafter, the husband of the prosecutrix had beaten and

assaulted her and subsequent to that, a village meeting was also held in which the prosecutrix has informed that her husband has beaten her. As nothing could be resolved in that meeting, the FIR has lodged.

(14) According to the prosecution case, the incident has happened on 16.10.2013. Ex.P/1 is a written complaint which is undated and FIR has not been exhibited in this case. The contents of Ex.P/1 show that the incident had taken place a week prior to filing of the complaint and the specific date of incident has given as 16.10.2013. The date of filing of the complaint can be regarded as 21.10.2013, the date on which prosecutrix was sent for medical examination which shows that written complaint was filed after a delay of couple of days. This circumstance appears to be in favour of the appellant which shall be taken into consideration. The medico-legal examination report Ex.P/2 has been proved by Dr. Shashi Tirki (PW-3), who stated that she found three injuries of abrasions on the body of the prosecutrix on the date she examined her. She did not find any injury on her private parts. She was unable to give any opinion about recent intercourse having been done with the prosecutrix.

(15) According to the report of the injuries found on the body of the prosecutrix, the statement of the prosecutrix (PW-1) needs re-examination. She has not clearly made any such statement that it was the appellant who assaulted and injured her. Hence, this is a fact which cannot be left un-noticed and at this juncture, the admission made in the statement by Gajroop Singh (PW-8) in his cross-examination that

he had assaulted and beaten his wife and the similar admission made by Heeralal (PW-4) in his cross-examination find, relevance and create a circumstance which appears to be in favour of the appellant. Statement of Gajroop Singh (PW-8) also has relevance that he was not informed by the prosecutrix herself that she was beaten by the appellant. This is again a circumstance which needs consideration.

(16) After scrutinizing the evidence of all the relevant witnesses in this case, I feel inclined to come to this conclusion that the prosecutrix has not come forward with all the truth behind the incident. The delay of 4-5 days in filing the complaint is not explained, the circumstance of rift between the prosecutrix and her husband and this explanation is also needed, as to why the prosecutrix did not take into confidence her husband and disclosed about the incident to him immediately. Sukhmani (PW-2) is also relevant witness who had arrived immediately on the spot and she has not given any statement of seeing any injuries on the body of the prosecutrix. This statement also affects the truthfulness of the statement given by the complainant in this case. Thus, the evidence of prosecution does not inspire confidence. Hence, after due consideration and on close scrutiny of all the evidence present on record in this case, I am of the view that the prosecution has failed to prove its case beyond reasonable doubt. As the principle is that suspicion howsoever strong cannot take place of proof and in case where two views can be formed, in that condition the Court should take the view that is favourable to the accused. Hence, on the basis of the findings herein-above, this appeal is allowed and the conviction and sentence imposed upon the appellant by the impugned judgment is hereby set aside and the appellant is acquitted.

of the charge framed against him. The appellant is in jail and he be set at liberty forthwith after being satisfied by him the requirement of Section 437A of the Cr.P.C.

(17) Accordingly, the appeal is allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

Nimmi