

HIGH COURT OF CHHATTISGARH, BILASPUR
ACQA No. 187 of 2010

State of Chhattisgarh, Through District Magistrate, District Rajnandgaon
 (C.G.) **---- Appellant**

Versus

Khemlal S/o. Dukharam Lodhi, Aged about 27 years, Occupation
 Agriculturist, R/o. Village Singarpur, Thana Gandai, District Rajnandgaon
 (C.G.)

----Respondent

 For Appellant/State :- Mr. Satish Gupta, Govt. Advocate

For Respondents :- Mr. Roop Naik, Advocate.

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Judgment

Per Ram Prasanna Sharma, J

05.02.2018

1. This acquittal appeal is directed against the judgment dated 26-09-2006 passed by the Additional Sessions judge, Khairagarah, Session Devision Rajnandgaon, in Session Trial No. 37 of 2006, wherein the said Court has acquitted the respondent for commission of offence punishable under Sections 450,342 and 376(1) of the IPC 1860 for commission of house trespass, wrongful confinement and rape of the prosecutrix at village Charbhata.
2. As per the prosecution case, on 05-03-2006 at about 6.00 pm, the prosecutrix was at her home at village Charbhata. At the same time,

one boy who came as a guest of her neighbour Jhadiram, entered into the courtyard of the prosecutrix and requested her to provide drinking water. When she gave him a glass of water, the said boy caught hold of her hands and when the prosecutrix tried to cry, the respondent put some cloth in her mouth and dragged her inside the room and removed her petticoat, sari and committed sexual intercourse with her against her will and without her consent, thereafter, the respondent fled away from there. The prosecutrix reached to the house of her neighbour Jhadiram and informed about the incident to one Suklal who was present there and identified the accused/respondent. Thereafter, when her husband returned home she narrated the incident to him. Upon her information, Dehatinalshi Ex.P-1 was recorded and on the said basis FIR Ex.P-7 was registered against the accused/respondent. After completion of investigation, charge sheet was filed against the respondent. Respondent pleaded innocence and therefore, the trial was conducted. After examination of all the witnesses, statements of the respondent were recorded under Section 313 of the CrPC. After hearing the parties, the trial Court acquitted the respondent as aforementioned.

3. Learned counsel for the State submits as under:-

(I) That evidence of prosecutrix (PW-1) and her husband (PW-2) is cogent and reliable, proving the guilt of respondent but the trial Court has failed to appreciate the evidence of prosecution witnesses in its true perspective.

(ii) That the statement of prosecutrix (PW-1) does not suffer from any material omission or contradiction and can solely be the basis for conviction even without any corroboration.

(iii) Clothes of respondent was seized after the incident which has confirmed the presence of semen in underwear and slide of the prosecutrix which is strong circumstance for commission of offence.

4. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and same is not liable to be disturbed while invoking jurisdiction of the appeal.

5. To substantiate the charge prosecution has examined as many as 8 witnesses in their support; respondent did not examine any witness in his defence.

6. We have heard learned counsel for both the parties and perused the record of the trial Court.

7. Case of the prosecution is based on the statement of prosecutrix and other witnesses who assisted in the investigation. Admittedly, the prosecutrix is a major and married lady aged about 23 years. She deposed that the accused/respondent caught hold her hands and dragged her inside the room and threatened her to kill that is why she did not cry. She deposed in paragraph-9, that villager namely Tijau, Chhabilal, Ramhinbai and accused/respondent were sitting in front of her house. From her statement, it is clear that she neither raised alarm nor resisted during the process of intercourse. She has admitted that Laxman, Sukhlal, Tijauram are

her neighbours and If any kind of incident happens she could have called them for assistance and they would have come.

8. Considering her entire evidence it is difficult for us to hold that it is a case of unconsensual intercourse. In her statement recorded under Section 161 of the Cr.P.C. she has stated that appellant put some cloth in her mouth i.e why she was not able to cry but in her statement before the Court she deposed that she did not cry because the appellant threatened to kill her. Version of this witness is not stable, she deposed different things at different stages of investigation/trial. It is the quality of evidence that is to be weighed in reaching to conclusion. Statement of this witness is full of contradiction and do not inspire confidence because graver the offence stricter the proof. She deposed that after the incident she narrated the same to one Suklal but Suklal was not examined before the Court below, therefore, truthfulness of version of prosecutrix is under cloud. Conviction in a case of rape can rest solely on the basis of testimony of the prosecutrix, but that can be done only where the Court is convinced about truthfulness of the evidence of the prosecutrix and there exists no circumstances which cast a shadow of doubt over her veracity. In the instant case, we do not find her evidence to be of sterling quality on whose sole testimony conviction can be based.
9. The prosecutrix is a married lady living with her husband and she is accustomed to intercourse, therefore, finding of semen in her clothes is not incriminating circumstance against the appellant especially when there is no serological examination regarding origin of semen. Again, the accused/respondent is aged about 27

years, therefore, finding of semen in his undergarments is also not incriminating circumstance against him. Considering the facts and circumstance of the case, prosecutrix appears to be a consenting party and Section 114 A of the Evidence Act, 1872 will not apply in the facts of the present case.

10. On overall assessment of evidence, we are of the view, that the findings arrived at by the trial Court is not perverse, it can not be said that the trial Court has considered irrelevant and extraneous material and it would not be safe for us to reverse the finding of acquittal. For the foregoing, the appeal fails and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)