

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 635 of 1999

- Ramnath, S/o Gauturam Bargah, age 26 years, R/o Patelpara, Temri, PS-Patna, District-Sarguja (MP) (Now CG)

---- Appellant

Versus

- The State Of M.P. (Now Chhattisgarh) through PS Patna, District-Sarguja (MP)

---- Respondent

For Appellant	:	Shri Shakti Raj Sinha, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

19/03/2018

This appeal arises out of the judgment of conviction and order of sentence dated 5.2.1999 passed by the Special Judge {Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act}, Sarguja, Ambikapur, in Special Criminal Case No.348/97 convicting the accused/appellant under Sections 376(1), 450 & 323 of IPC and sentencing him to undergo RI for 7 years, fine of Rs.1000/-; RI for 7 years & RI for 3 months respectively with default stipulation.

02. As per prosecution case, prosecutrix (PW-1), a married lady of about 33 years having two minor children, was working as labour and temporarily residing in Village-Tengir in a *kachcha* hut. Her husband was a paralytic patient and was residing in Village-Patna. It is alleged that in the night intervening 1st and 2nd April, 1997 when the prosecutrix

was sleeping in her hut along with her minor children, aged about 5 years and 2 years, the appellant gained entry in the said hut from roof side and committed forcible sexual intercourse with her. While the appellant was committing the said offence, PW-5 Jyoti, aged 5 years, daughter of the prosecutrix, woke up and saw the appellant mounting on her mother. It is alleged that the appellant also kicked PW-5 as a result of which she sustained injuries. On 2.4.1997 at 11.50 am unnumbered FIR (Ex.P/5) was lodged by the prosecutrix at Police Station – Patna Distt. Sarguja against the appellant under Sections 456, 376, 323, 506B of IPC and Section 3(1)(xii) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act. Based on this report, numbered FIR (Ex.P/4) was registered against the appellant on 4.4.1997 at Police Station - AJAK, Saruja. The prosecutrix was medically examined on 2.4.1997 (vide unexhibited medical report) and as per the doctor, no injury was found on any part of her body including her private parts which is suggestive of non-performance of forcible sexual intercourse. Her vaginal slides were prepared and sent to FSL. However, as per FSL report (unexhibited), no spermatozoa was found on her petticoat, slides as well as underwear of the appellant. Upon medical examination of the accused/appellant vide Ex.P/3 on 9.5.1997 he was found capable of performing sexual intercourse. While framing charge, the trial Court framed charges under Sections 450, 376(1), 323 of IPC and Sections 3(1)(xii) and 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (in short “the Act”).

03. 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. In 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 while acquitting the appellant of the charges under Sections 3(1)(xii) and 3(2)(v) of the Act, convicted and sentenced him as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that present is a case of either false implication or of consent but unfortunately the appellant was seen by minor daughter of the prosecutrix and therefore, a report has been lodged.
- that medical report of the prosecutrix (unexhibited) as well as the FSL report (unexhibited) do not support the prosecution case.
- according to the prosecutrix, while she was being subjected to forcible sexual intercourse by the appellant, she resisted the same and during scuffle between the two, she also bit and scratched the appellant but no such injury was found on the person of the appellant as per his medical report.
- that there are material contradictions in the Court statement of the prosecutrix from that of her diary statement.
- that the investigating officer as also the lady doctor who examined the prosecutrix have not been examined by the prosecution.

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 prosecutrix has stated that she was working at Pandavpara with one Bhushan Singh and as her husband's house was a bit far from her work place, she was temporarily residing with her children at Village-Tengri in a hut which had no roof, and therefore, she had put a temporary roof on the said hut. On the day of Holy after returning from her workplace she was in her house when the appellant reached there in intoxicated condition. She asked him to go from there. Thereafter she went to her neighbour's house and informed them about coming of the appellant and not leaving the house despite being told. However, when she returned to her house, the appellant had already gone from there. After 6-7 days of the said incident, the appellant again came to her house after cutting the rood at about 1-1.30 in the night, at that time she was wearing only petticoat and blouse; the appellant sat by her and after removing her clothes he committed forcible sexual intercourse with her. While the appellant was removing her clothes she raised her cries, however, her mouth was gagged by the appellant with his hand, on which she bit her left hand and the appellant then slapped her and thereafter, she scratched his cheeks by her nails. When the appellant slapped her, she started crying, hearing the same her minor daughter Jyoti woke up and started crying, then the appellant also

kicked her. The appellant also tore apart her petticoat and blouse. He took her out of the house while beating. Hearing the cries, Musku, Baran, Devchand and other persons came there and they also saw the appellant beating her. She informed about the entire incident to them. Thereafter, on being asked by the witnesses, the appellant went from there. At that time the appellant was carrying axe and therefore, out of fear nobody could dare to say anything to him. She states that on the second day she lodged a report at police station and she was medically examined.

In cross-examination, she states that it must have taken about 30-45 minutes to cut the roof. She states that she had informed the police that the appellant had come with axe and if the same is not recorded in her diary statement she cannot tell the reason. She admits that when the appellant had completed half of the bad work with her, then she woke up. She states that she had told the police about beating by the appellant to her daughter and if the same is not recorded in her diary statement she cannot tell the reason. She states that when the appellant entered her house, he did not have any talk with her, when he started committing marpeet with her, at that time earthen lamp was burning and therefore, she could identify him and if this fact is not recorded in her diary statement she cannot tell the reason. She states that when the appellant came to her house he was drunk, but he was in a position to walk. She states that the incident of rape took place after seven days of appellant's coming to her house and this fact was disclosed by her to the police and if the same is not recorded she cannot tell the reason. She states that due to beating given by the appellant she sustained injury on her cheek and back and

the marks of injury were there on her body for 10-11 days. This fact was disclosed by her to the lady doctor who examined her.

09. PW-3 Narayan Singh, Patwari, prepared the spot map. PW-4 Kameshwar, husband of the prosecutrix, has stated that he is handicapped and that it was disclosed to him by the prosecutrix that she was subjected to rape by the appellant. PW-5 Jyoti, minor daughter of the prosecutrix, has stated that she knew the appellant. On the date of incident when she was sleeping in her house, the appellant came there and had a quarrel with her mother. He then mounted on her mother and her mother was crying. She states that the appellant kicked her and also beat her brother and mother. The appellant was pressing her neck of her mother and this fact was disclosed by her to the police and if the same is not recorded she cannot tell the reason. She states that she has come to the Court with her mother, her mother had scolded her outside the Court and told her to disclose the entire things otherwise she would be beaten. However, she has denied the suggestion of being tutored by her mother.

10. PW-6 Devchand and PW-7 Somar Sai, neighbours of the prosecutrix, have turned hostile. PW-8 Dr. AK Sharma medically examined the appellant vide Ex.P/3 and found him capable of performing sexual intercourse. PW-9 Jhitkuram is a witness to seizure Ex.P/4. PW-10 SL Patle, Sub-Inspector registered the FIR. PW-11 HN Shukla, Dy. S.P., signed the Challan before filing of the same.

11. The investigating officer and the lady doctor who medically examined the prosecutrix have not been examined.

12. DW-1 Shiva and DW-2 Kamta Prasad have been examined to prove the fact that the prosecutrix was a lady of easy virtue and used to falsely implicated innocent persons for extracting money.

13. Admittedly, in the present case, the lady doctor who medically examined the prosecutrix as well as the investigating officer have not been examined by the prosecution and the independent witnesses PW-6 Devchand and PW-7 Somar Sai, neighbours of the prosecutrix, have turned hostile. 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. At the same time it is to be borne in mind that while rape causes the greatest distress and humiliation to the victim, a false allegation of rape 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 a case of rape, 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 there are material inconsistencies in her Court statement as compared with her diary statement. She appears to have exaggerated her version while deposing that during the course of rape she bit and scratched the appellant whereas no injury was found on the

person of the appellant. She states that when the appellant had completed half of the bad work, then she woke up and resisted the same, however, it also appears to be highly improbable. She states that the appellant was also carrying axe whereas no seizure of axe was effected from the appellant. This apart, as per medical report of the prosecutrix (unexhibited) no injury was found on any part of her body including her private parts which is suggestive of non-performance of forcible sexual intercourse, and her vaginal slides were prepared and sent for FSL. Further, as per FSL report (unexhibited), no spermatozoa was found on her petticoat, slides as well as underwear of the appellant. Thus, considering the nature and quality of overall evidence on record, the manner in which the investigation was carried out, in particular the evidence of the prosecutrix and her conduct during the alleged offence and subsequent thereto, we are of the opinion that the evidence led by the prosecution are not sufficient to substantiate the charges leveled against the appellant and there is a reasonable doubt as to the complicity of the appellant in the crime in question. Being so, the benefit of such doubt has to be given to the appellant.

15. In the result, the appeal is allowed. The impugned judgment is set aside and the appellant is acquitted of all the charges leveled against him by giving him benefit of doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Pritinker Diwaker
Judge