

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.261 of 1999

Judgment Reserved on : 3.1.2018

Judgment Delivered on : 20.3.2018

Bhuwan Lal, son of Chhannulal Chandrakar, aged about 25 years, resident of Khertha, P.S. Dondilohara, District Durg, M.P. (now Chhattisgarh)

---- Appellant

versus

State of M.P. (now Chhattisgarh), through Police Station Dondilohara, District Durg

--- Respondent

For Appellant : Shri Rakesh Thakur, Advocate
For Respondent/State : Shri Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 2.12.1998 passed by the Additional Sessions Judge, Balod in Sessions Trial No.190 of 1997 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376(1) of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.200/- with default stipulation

2. Facts of the case, in brief, are that on 13.4.1997 at about 4:30 p.m., First Information Report (Ex.P1) was lodged by the prosecutrix (PW1), aged about 18 years alleging that for the last 3 days she was going in the agricultural field of Chhannulal, father of the Appellant for keeping watch on the crop of paddy. On 13.4.1997 at about 10:00 a.m., the Appellant came to the

agricultural field. Having seen her alone there, he deliberately caught her and caused her to fall down on the bank of the drainage. When she tried to shout, he gagged her mouth with a *gamchha* (a piece of cloth) and thereafter committed rape with her. He also threatened her of life on being disclosed the incident to anyone. Her bangles were broken and she suffered injury on her left ankle. She returned home and told about the incident to her mother and thereafter she lodged the FIR (Ex.P1). Her medical examination was done by Dr. Alpana Agrawal (PW3). She gave her report (Ex.P2) in which she found a fresh scratch of 2 m.m. x 1 m.m. present below the vagina of the prosecutrix. On being touched on the scratch, blood was oozing out. The prosecutrix was found to be habitual to sexual intercourse and no definite opinion could be given regarding recent sexual intercourse with the prosecutrix. Vide Ex.P6, petticoat of the prosecutrix was seized. The said petticoat was examined by Dr. Alpana Agrawal (PW3). She gave her report (Ex.P3) in which she found blood stains and soil stains on the petticoat. Pieces of broken bangles were seized from the spot vide Ex.P7. One bangle was seized from the hand of the prosecutrix vide Ex.P8. The seized articles and the vaginal slides were sent to the Forensic Science Laboratory for chemical examination. FSL Report is Ex.P12 which states that stains of semen were present on the petticoat of the prosecutrix. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 376, 506B, 323 of the Indian Penal Code. Charges were framed against him under Sections 376, 506(2) and 323 of the Indian Penal Code.

3. To rope in the Appellant, the prosecution examined as many as 4

witnesses. Statement of the Appellant was also recorded under Section 313 Cr.P.C. in which he denied the guilt and pleaded innocence. 2 witnesses have been examined in his defence.

4. The Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that at the time of occurrence, the prosecutrix did not raise any alarm. A woman also met the prosecutrix near the place of occurrence after the occurrence, but she did not disclose her about the incident. There are material contradictions in the testimony of the prosecutrix, therefore, her testimony is not reliable. He further submits that no case is made out against the Appellant and he deserves to be acquitted.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. The prosecutrix (PW1) has stated that brother of the Appellant, namely, Bhagwat had taken her for keeping watch on the crop in his agricultural field. At about 10:00 a.m., the Appellant came there, caught her hand and caused her to fall down. When she tried to shout, he gagged her mouth with a towel. Thereafter, he committed forcible sexual intercourse with her. After the incident, he also threatened her of life on being disclosed the incident to anyone. Her bangles were broken and her clothes were also got

dirty. She returned home and told about the incident to her mother and thereafter she lodged the FIR (Ex.P1). In paragraph 4, in examination-in-chief, she has categorically stated that the Appellant had committed sexual intercourse with her without her consent. In paragraph 10, she has stated that bleeding had also taken place from her vagina. In paragraph 11, a suggestion was put to her that the Appellant had committed sexual intercourse with her with her own consent, but she denied the suggestion.

9. Dashodabai (PW2), mother of the prosecutrix has stated that when she returned home, she found the prosecutrix at home and she was weeping. On being asked, she told her about the incident that the Appellant had committed forcible sexual intercourse with her in the agricultural field. She also found that the clothes of the prosecutrix had got dirty. She has further stated that she went to the house of the Appellant and told about the incident to the mother of the Appellant. On this, mother of the Appellant abused the Appellant. Thereafter, family members of the Appellant came there and challenged her to take any step. She has remained firm during her cross-examination.
10. Dr. Alpana Agrawal (PW3) has stated that she examined the prosecutrix (PW1) on 14.4.1997. She has stated that she gave her report (Ex.P2) in which she stated that she found a fresh scratch below the vagina of the prosecutrix and on being touched on the scratch, blood was oozing out from there. She has further stated that she had also examined the petticoat of the prosecutrix in which she had found blood stains on the petticoat (Ex.P3). She has opined that the prosecutrix was habitual to sexual intercourse. No definite opinion could be given regarding recent sexual

intercourse with the prosecutrix.

11. Investigating Officer Sub-Inspector M.R. Nayak (PW4) has stated that he recorded the FIR (Ex.P1) and prepared spot-map (Ex.P5). From the spot, he seized pieces of broken bangles vide Ex.P7. Vide Ex.P8, he seized a bangle from the hand of the prosecutrix. He also seized clothes and vaginal slides of the prosecutrix vide Ex.P6.
12. From the evidence led by the prosecution, it is clear that the prosecutrix (PW1) had gone to the agricultural field of the father of the Appellant where the Appellant had committed forcible sexual intercourse with her. Though some minor contradictions are found in her cross-examination yet the same are not material. Her testimony is duly corroborated by her mother Dashodabai (PW2). There is no material contradiction in the testimony of the prosecutrix. In paragraph 10 of her examination, she has stated about the bleeding from her vagina which is duly corroborated by her medical examination report (Ex.P2) as also by the report of the examination of her petticoat (Ex.P3) in which it is stated that blood stains were found on the petticoat.
13. It was argued on behalf of the Appellant that as per the medical examination report (Ex.P2) of the prosecutrix, she is habitual to sexual intercourse and, therefore, her testimony is not reliable. But, it has already been observed that the contradictions occurred in her testimony are not material. She has remained firm during her cross-examination. There is no reason available on record to make a false allegation against the Appellant by the prosecutrix. From the medical evidence also, the case of the prosecutrix is

corroborated.

- 14.** It has been observed by the Supreme Court in **(2012) 7 SCC 171** **[Narender Kumar v. State (NCT of Delhi)]** as under:

“20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

26. Even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of “easy virtues” or a woman of “loose moral character” can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated. (Vide *State of Maharashtra v. Madhukar Narayan Mardikar*, (1991) 1 SCC 57, *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 and *State of U.P. v. Pappu*, (2005) 3 SCC 594.)”

- 15.** In the light of above discussion, I find that the appeal has no merit. It is, therefore, dismissed. The impugned judgment of conviction and sentence is affirmed.
- 16.** It is reported that the Appellant is on bail. His bail bonds are cancelled. He shall immediately surrender before the Trial Court or he shall be taken into custody by the police for his undergoing the

remaining part of sentence, if any.

- 17.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE