

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2474 of 2000

Animesh, S/o Arvind Vishwas, aged 20 years, R/o Police Station Pankhazoor,
District Kanker (Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant : Shri B.P. Singh, Advocate
For Respondent/State : Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

24.7.2018

1. This appeal is directed against the judgment dated 10.7.2000 passed by the Special/Sessions Judge, Jagdalpur in Case No.4 of 1999 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.5,000/- with default stipulation

2. As per the prosecution case, on 2.11.1998 at about 10:00 a.m., the prosecutrix (PW1), aged about 16 years had gone with her younger brother Renuram, aged about 6 years towards the jungle for grazing their cattle. At that time, the Appellant came there, he threatened her younger brother and thereafter he committed rape with her. She returned home and told the whole incident to her parents. First Information Report (Ex.P1) was lodged by her. She was medically examined by Dr. Parmeshwari Lal (PW4). Her report is Ex.P2 in which she found one abrasion with redness over

right side of breast of the prosecutrix. In internal examination of the prosecutrix, she found that perianal tearing in the vagina was present at 6 O'clock position in $\frac{1}{2}$ cm. x $\frac{1}{4}$ cm. size. She also found that hymen was ruptured at many places and the vagina was admitting only one finger. She could not give definite opinion regarding rape with the prosecutrix. She also examined petticoat of the prosecutrix and found stains of sperm thereon. She advised for chemical examination of the petticoat. She prepared vaginal slides and handed over to the police. The Appellant was medically examined by Dr. M.S. Kanwar (PW5). His report is Ex.P3 in which he found the Appellant to be capable of performing sexual intercourse. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. The petticoat of the prosecutrix and her vaginal slides were sent for chemical examination to the Forensic Science Laboratory, but no FSL report is available on record. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 376 of the Indian Penal Code and under Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Charge was framed against him under Section 376 of the Indian Penal Code.

3. To rope in the Appellant, the prosecution examined as many as 7 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt and pleaded innocence. No witness has been examined in his defence.
4. After Trial, 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 submits that the Appellant is innocent. He has been falsely implicated in the case due to a previous enmity. From the statement of the prosecutrix (PW1), it is clear that she was a consenting party. Her age is not proved to be below 16 years. Therefore, the offence under Section 376 of the Indian Penal Code is not made out.
6. On the contrary, Learned Counsel appearing for the State supports the impugned judgment of conviction and sentence and submits that the statement of the prosecutrix (PW1) is wholly reliable. Her statement is duly corroborated by the medical evidence and the statements of the other witnesses. Therefore, the Appellant has been rightly convicted and sentenced by the Trial Court.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. The prosecutrix (PW1) has stated in her Court statement that when she along with her younger brother Renuram had gone towards the field for grazing their cattle, the Appellant came there and caught her. He took her towards the jungle and thereafter committed rape with her. On return to home, she narrated the incident to her mother. Thereafter, she lodged the report (Ex.P1). In her cross-examination, she has further stated that at the time of incident, when the Appellant lifted her up and was taking her away, he threatened her younger brother that on his coming behind him, he will kill him. In paragraph 5 of her cross-examination, it was

suggested to her by the defence that she had gone along with the Appellant on his being asked to accompany him, but the prosecutrix denied the suggestion.

9. Lakhmuram (PW2), father of the prosecutrix has stated that on return, the prosecutrix had told him about the incident. Thereafter, he informed the same to Patel and a village meeting was called.
10. Kotwar Maharibai (PW3) has also supported the above statement of Lakhmuram (PW2) and has stated that Lakhmuram had come to her and told about the incident and thereafter a village meeting was called.
11. Dr. Parmeshwari Lal (PW4) has stated that she examined the prosecutrix on 3.11.1998 and gave her report (Ex.P2) in which she found one abrasion with redness over right side of breast of the prosecutrix. In internal examination of the prosecutrix, she found that perianal tearing was present at 6 O'clock position in $\frac{1}{2}$ cm. x $\frac{1}{4}$ cm. size. She also found that hymen was ruptured at many places and the vagina was admitting only one finger. She could not give definite opinion regarding rape with the prosecutrix. She also examined petticoat of the prosecutrix and found stains of sperm thereon. She advised for chemical examination of the petticoat. She prepared vaginal slides and handed over to the police.
12. Dr. M.S. Kanwar (PW5) examined the Appellant on 3.11.1998 and gave his report (Ex.P3) in which he found the Appellant to be capable of performing sexual intercourse.
13. Sub-Inspector H.K. Shrivastava (PW7) has stated that he

investigated the offence in question. He has stated that he recorded the FIR (Ex.P1) on the report of the prosecutrix. He has further stated that he also recorded statements under Section 161 of the Code of Criminal Procedure. He prepared spot-map (Ex.P11) as stated by the prosecutrix. During investigation, he seized vaginal slides and petticoat of the prosecutrix vide Ex.P4 and underwear of the Appellant vide Ex.P5. He has admitted that he did not record the statement of younger brother of the prosecutrix though he was present at the spot at the time of incident.

14. A minute examination of the above statements of the witnesses makes it clear that the prosecutrix (PW1) has categorically stated that she was raped by the Appellant. Though her younger brother, aged about 6 years has not been examined nor has he been cited as a witness by the prosecution, the prosecutrix has remained firm during her cross-examination. Immediately after the incident, she informed the same to her parents. A village meeting was also called by her father immediately. On medical examination (Ex.P2), abrasion was also found on her breast and her hymen was also found ruptured at many places. Perianal tearing was also present in her vagina at 6 O'clock position in $\frac{1}{2}$ cm. x $\frac{1}{4}$ cm size. From the above, it is clearly established that sexual intercourse was committed with the prosecutrix.
15. It has been argued on behalf of the Appellant that the prosecutrix was a consenting party. During cross-examination of the prosecutrix (PW1), she was put a suggestion in this regard, but she strongly denied the same. Had she been a consenting party, she

would not have immediately told her parents about the incident nor would have her father called a village meeting in this regard. It has been further argued that due to a previous enmity, the Appellant has been falsely implicated in the case. Lakhmuram (PW2), father of the prosecutrix has denied the suggestion put to him in this regard. Apart from this, there is nothing on record on the basis of which it could be inferred that there was any previous enmity between the concerned parties.

16. It is a settled legal position 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. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime.

17. In **(2009) 16 SCC 69 (Rajinder @ Raju v. State of H.P.)**, it has been observed by the Supreme Court as under:

“19. In the context of Indian culture, a woman – victim of sexual aggression – would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind

that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.”

18. In the light of above discussion, in the case in hand, the statement of the prosecutrix (PW1) appears to be fully reliable. There is no evidence on record to show that there was any previous enmity between the concerned parties. I find no reason to believe that the prosecutrix has falsely implicated the Appellant. There is nothing on record which could lead to believe that the prosecutrix was a consenting party. Her statement is duly corroborated by the medical evidence. Thus, I find that the Appellant has been rightly convicted by the Trial Court.
19. At this stage, it is prayed by Learned Counsel appearing for the Appellant that the sentence imposed upon the Appellant may be restricted to the period already undergone by him. Learned Counsel submits that the incident was of the year 1998. The Appellant is a first offender. He has no criminal antecedent. He has already undergone about 2 years. Therefore, it would not be in the interest of justice to send him back to jail.
20. Learned Counsel appearing for the State opposes the above prayer made on behalf of the Appellant.

- 21.** The minimum prescribed sentence for the offence under Section 376 of the Indian Penal Code is 7 years. The Trial Court has, therefore, rightly imposed the sentence. I find no ground to reduce the minimum prescribed sentence. Therefore, the sentence part is also affirmed.
- 22.** Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
- 23.** 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 for undergoing the remaining sentence, if any.
- 24.** 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