

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 18/07/2018

Judgment delevered on 25/07/2018

CRA No. 1048 of 2002

- Manohar S/o Dayaram Marar aged about 20 years, R/o. Village- Bhothipar Police Station Chowki- Bhakhara, Police Station- Kurud, District- Dhamtari (Chhattisgarh).

---- Appellant

Versus

- The State of Chhattisgarh Through: Police Chowki Bhakhara Police Station- Kurud District- Dhamtari (Chhattisgarh).

---- Respondent

For Appellant : Mr. Y. C. Sharma, Advocate
For Respondent/State : Mr. Adhiraj Surana, Dy. G. A.

Hon'ble Shri Justice Gautam Chourdiya

Judgment (C.A.V.)

1. This appeal arises out of the judgment of conviction and order of sentence dated 06.09.2002 passed by the Additional Sessions Judge, Dhamtari in S.T. No. 424/2000 convicting the accused\appellant under Section 376 of IPC and sentencing him to undergo RI for ten years with fine of Rs. 5,000/-, in default of payment of fine to further undergo RI for one year.
2. Brief facts of the case are that on 30.09.2000 at about 10.00 a.m.

when the prosecutrix was returning home after cutting the grass, near the field of Dhansingh, appellant/accused met her and ask & compelled her for sexual intercourse. After listening the same, prosecutrix became angry. Suddenly, the accused/appellant caught hold of her hand; gaged her mouth and thereafter committed sexual intercourse with her without her consent. After this incident, prosecutrix came back to her home and narrated the entire incident to her husband but due to fear they did not lodge FIR. A day after the incident, the proecutrix narrated the incident to her relatives, mother-in-law and other villagers of the village. After this, Sonlal, Devrath and other villagers suggested her to lodge FIR, thereafter, the prosecutrix with her husband and village Kotwar on 02.11.2000 lodged FIR vide Ex.P/5 at Police Chowki Bharwara bearing FIR No. 0/2000, therefore, a numbered FIR 316/2000 vide Ex.P/4 was also lodged at Police Station -Kurud. Spot map Ex.P/6 was prepared by the investigating agency.

3. As per Ex. P/9, prosecutrix was sent for medical examination. Dr. M. Purohit (PW-8) did medical examination of prosecutrix and examination report (Ex.P/9-A) was prepared in which he found no external or internal injury on the body of the prosecutrix. One underwear was seized at the instance of accused/appellant as per seizure memo Ex.P/10. Vaginal slide was prepared by Dr. M. Purohit (PW-8) and handed over the same to the police personnel for chemical examination. Seized articles were sent to the FSL for chemical analysis and as per report of FSL (Ex.P-13), human spermatozoa was found on the clothing & vaginal slides

of the prosecutrix. The Accused/appellant was also medically examined by Dr. H. C. Gohoja (PW-5) and was found to be capable of performing sex.

4. After completion of investigation, charge sheet has been filed by the concerned authority against the accused/appellant under Sections 376 of the Indian Penal Code. However, while framing charge the trial Court framed charge against the accused/appellant under Section 376 of IPC.
5. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined one witness- Alakhram.
6. The trial Court, after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant in the manner as mentioned above in paragraph 1 of this Judgment.
7. Learned counsel for the appellant/accused submits there is no independent eyewitness to the incident and the accused has been falsely implicated in crime in question solely on the basis of testimony of the prosecutrix. He further submits that the allegation made by the prosecutrix has been shattered by the medical evidence which clearly indicates that there was no sign

of external or internal injury on the body of prosecutrix. He further submits that there is a delay of two days in lodging FIR which has not been explained by the prosecution. Learned counsel for the appellant also argue regarding sentence and alternative remedy for reducing the sentence. Hence, under these circumstance, the conviction of the appellant is bad in law and the same is liable to be set aside.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that the delay in lodging FIR has already been explained in FIR itself that due to fear of the incident, the report could not be lodged by the prosecutrix immediately after the incident. There is no reason to disbelieve the statement of the prosecutrix and other witnesses. He further submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. Heard learned counsel for the parties and perused the material available on record.
10. Prosecutrix PW-1 in her examination has stated that on the date of incident when she was returning home after cutting grass and reached near the field of Dhan singh, accused/appellant met her, asked to allow him to have sex and hearing this she became angry and opposed the accused/appellant. Thereafter, the accused/appellant gaged her mouth, lie her down and committed sexual intercourse with her against her wishes. After the incident, she returned to her home and narrated the entire incident to her husband, but due to fear, she and her husband did not disclose

about the incident to anyone. However, after two days of incident they had discussed about the incident with their family members and other villagers and after deliberation and discussion, the report was lodged by prosecutrix. In the FIR lodged by the prosecutrix and her statement recorded under Section 161 of Cr.P.C. there is no major contradiction or omission mention which makes her testimony unreliable or untrustworthy.

11. Santosh (PW-2) in para 2 of his statement has supported the statement given by the prosecutrix. He stated that when his wife was returning home after cutting the grass in the field, on the way, the accused gaged her mouth and committed rape with her.
12. Sonlal (PW-3) also supported the statement of prosecutrix and stated that after two days of incident regarding rape with the prosecutrix, Santosh (PW-2) husband of the prosecutrix informed about the incident and then the villagers suggested for lodging FIR and thereafter the prosecutrix and her husband had lodged FIR (Ex.P/5).
13. Padma Bai (PW-4) has not supported the prosecution case and she was declared hostile.
14. Shri S. K. Dubey (PW-6) has also proved that FIR 0/2000 lodged at Bharwara out post vide Ex. P/5 and a numbered FIR vide Ex. P/4 by the prosecutrix in both FIR the statement of her is not contradictory and completely corroborated.
15. Dr. M. Purohit (PW-8) examined the prosecutrix and during examination doctor did not notice any internal or external injury on the private part of the prosecutrix. He prepared a vaginal slide

and handed over the same to the police personnel for chemical examination.

16. L. K. Kashyap (PW-7) vide Ex.P/13 seized a peticoat from the prosecutrix and that seizure is not challenged in cross-examination. L. K. Kashyap (PW-7) also prepared vaginal slide which is also not challenged in cross-examination. According to the FSL report vide Ex.P/13 spermatozoa was found in seized article.

17. According to the statement of accused/appellant recorded under Section 313 of Cr.P.C. he has stated that he has been falsely implicated because of enmity with the prosecution witnesses but he failed to prove any enmity between the prosecution witnesses and himself. There is no any suggestion regarding any previous enmity between prosecutrix or her family member with the accused.

18. In the instant case, the prosecutrix has very categorically stated that when she was returning home, on the way the appellant met her, asked to allow him to have sex with her and on her refusal, he dragged her to a place, knocked her down, committed forcible sexual intercourse with her and thereafter threatened her to life. After returning home, she informed her husband about the incident of rape, however, due to fear, they did not tell anyone about the incident. It is true that the doctor did not notice any external or internal injury on the person of prosecutrix, but it is settled position of law that unless there are compelling reasons necessitating corroboration of the statement of prosecutrix, her testimony alone is sufficient to convict an accused under Section

376 of IPC. In the instant case the prosecutrix has given a vivid account of the entire episode as to how she was ravished by accused/appellant. The prosecutrix has been cross-examined at length by the defence but nothing could be elicited by the defence which makes her testimony unreliable or untrustworthy. Most importantly, nothing could be elicited by the defence as to why the appellant has been falsely implicated in this case and therefore the plea of false implication raised by the appellant does not worth acceptance.

19. That apart, in this case the prosecutrix did not allege any violent act of forced sexual intercourse. What she stated was that she was made to lie on the ground and the appellant put his male organ in her female organ without her consent. Thus, the absence of any external injury in such circumstances would not negate the allegation of sexual intercourse with the prosecutrix against her consent, particularly when she was medically examined after two days of the incident. In **State of Rajasthan v. N.K.** reported in **(2000) 5 SCC 30**, the Supreme Court held as under:

“18.The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case.....”

Thus, the testimony of the prosecutrix (PW-1) was, by itself,

sufficient to prove that the appellant committed sexual intercourse with her against her consent. Mere absence of any internal or external injury in the circumstance of the case would not belie the case of the prosecution.

20. Undoubtedly, there is two days' delay in lodging FIR. The prosecution has given an explanation with regard to the delay through the prosecutrix (PW-1) & her husband Santosh (PW-2) that they did not tell anything to anyone out of fear. This explanation also finds place in FIR (Ex.P-5). In several cases, the Supreme Court noticed the delay in lodging FIR in rape cases and took a view that delay in lodging FIR in such cases is a normal phenomena. A reference may be fruitfully made to *Satyapal v. State of Haryana* reported in AIR 2009 SC 2190, wherein the Supreme Court echoed similar sentiments. Para 20 of the report is extracted hereunder:

"20. This Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. **Delay in lodging the First Information Report** in a **case** of this nature is a normal phenomenon....."

In view of the explanation given by PW-1 and PW-2 and the fact that the family of victim in such cases is initially reluctant to lodge FIR, delay of two-three days in lodging FIR is not material and this delay does not affect the case of the prosecution.

21. Considering the all facts and circumstances of the case, particularly the age of the accused/appellant is 20 years at the

time of incident the appeal is partly allowed. Conviction part of the impugned judgment is maintained but his sentence is reduced to seven years with the fine imposed upon him by the trial Court.

22. Appellant is reported to be on bail. His bails bonds stand cancelled. He be taken into custody forthwith to serve out the remaining jail sentence imposed upon by this Court.

Sd/-

(Gautam Chourdiya)
Judge