

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 34 of 2013**

- Sulochni, W/o Sukhdev, Aged About 35 Years, Occupation Labour, R/o Village Kashkela , P.S. Jainagar , Distt. Surajpur, C.G.

---- Petitioner**Versus**

1. Motilal Panika S/o Chainsai Panika Aged About 28 Years R/o Village Kumdha Basti, P.S. Vishrampur, Distt. Surajpur, C.G.
2. The State Of Chhattisgarh Through - P.S. Jainager, Distt. Surguja (Now Surajpur), C.G.

---- Respondent

For Appellant
For Respondent-State

Shri A. K. Prasad, Advocate
Shri Arvind Dubey, PL

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board**08/01/2018**

1. Appellant would challenge the judgment of acquittal passed by the 1st Additional Sessions Judge, Surajpur acquitting the accused person from the charges under Section 376 IPC.
2. For an incident happened at about 7 pm on 20.05.2009, the FIR was lodged at about 21:30 hours on 24.05.2009 vide written report (Ex-P-1) stating that when she was returning on her bicycle, on which one bag of coal was loaded, at about 7 pm the accused came from behind and finding her alone, he inquired

about her friends and thereafter took the prosecutrix to the nearby forest, which was retaliated by the prosecutrix, but the accused slapped and tore down her blouse and after lifting her saree and petticoat, he committed forcible sexual intercourse. The prosecutrix states to have informed her daughter about the incident on the same day and to her mother on the next day. She also says that Surajpur SC/ST Police took down her report but sent her to Jainagar Police Station for medical examination.

3. After appreciating the evidence on record, the trial Court held that the prosecutrix, her daughter and her father are making contradictory statement, therefore, her case is not believable.
4. It is argued that her daughter is not an eye witness, therefore, her statement cannot be used to discredit the appellant, who has supported the prosecution and moreover, the medical evidence in respect of injuries over her breast by teeth bite is also proved. It is also argued that from the FIR itself, it is proved that the appellant was making effort for lodging the FIR, which was not taken down by Surajpur Police Station, therefore, the delay in lodging the FIR is properly explained.
5. Having heard learned counsel for the parties and on perusal of record, we are of the considered view that the trial Court should have discussed the evidence more elaborately. However, we find ourselves unable to disagree with the ultimate conclusion reached by the trial Court, because there is enough discrepancy or contradiction in the prosecution case, which makes it unsafe to convict the accused.

6. In the FIR itself, the prosecutrix states that her FIR was taken down by Surajpur Police, however, in her case diary statement (Ex-P-4), she would state that she had narrated the incident to her mother, her daughter and her brother Subhash as also to one 'Bagga Sardar of Vishrampur' and further that Surajpur Police instructed her to lodge FIR with Jainagar Police Station without stating that Surajpur Police had taken down her report. One Bagga Sardar appears to be the person who took the prosecutrix to one Dashrath Advocate for preparing the FIR, however, neither Subhash nor Bagga Sardar is cited as a witness by the Police.
7. Be that as it may, the delay in lodging the FIR, as mentioned in the FIR (Ex-P-2), is for want of the certificate of Scheduled Caste, but that is not the explanation mentioned either in the FIR or in the case diary statement. It is not stated in either of the document that she has lodged the report after obtaining the caste certificate. In the written report as well as in the case diary statement, the prosecutrix would state that she had informed about the incident to her daughter but her daughter Jyoti (PW-7) has turned hostile and not supported the prosecution. Had it been a case that the matter was never informed to PW-7 Jyoti, her statement would have been insignificant, but since the prosecutrix herself informed the Police that the entire incident was informed to her daughter Jyoti, her statement denying the knowledge about the incident assumes significance.

8. Even if we may not fully agree with the trial Court's opinion that it is a concocted case, still the quality of evidence available on record is unsafe to convict the accused for an offence under Section 376 IPC. With the delay in lodging the FIR having not been properly explained and her daughter not supporting the prosecution case and several persons with whom the prosecutrix interacted from the date of incident till the lodging of the report like her brother Subhash and Bagga Sardar having not been examined, we are of the view that the accused is entitled for benefit of doubt.
9. On the basis of above stated discussion, we find no case for entertaining this acquittal appeal, it deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma