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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 86 of 1998**

1. Nilu @ Hardas Ramchandani S/o Motumal Ramchandani, aged about 30 years, Caste- Sindhi, R/o Gali No. 6, Beside Bachchumal Sindhi, TeliBandha Raipur, District Raipur (M.P.) now (C.G.).

---- Appellant**Versus**

1. State of Madhya Pradesh (now Chhattisgarh), through Police Station Civil Lines Raipur, District Raipur.

---- Respondent

For Appellant	:	Shri Anand Kumar Gupta, Advocate.
For Respondent/State	:	Shri Santosh Bharat, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**01/08/2019****Judgment On Board**

- 1) This appeal is filed by the accused through Jail Superintendent, Raipur under section 374/383 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 21/05/1996 passed by Third Additional Sessions Judge, Raipur (M.P.) now (C.G.) in Session Trial No. 225/95.
- 2) By this judgment impugned appellant Nilu @ Hardas Ramchandani stands convicted and sentenced as under:-

Conviction	Sentences
U/s. 366 of Indian Penal Code	R.I. for 3 years & fine of Rs. 200/- in default of fine additional R.I. for one month.
U/s. 376 of Indian Penal Code ((in short "IPC")	R.I. for 7 years & fine of Rs. 500/- in default of fine additional R.I. for two and half months.
(Both sentences were directed to run consecutively)	

- 3) No one appeared on behalf of the appellant, when the matter is called. In these circumstances, this Court is left with no other option but to appoint the counsel through the High Court Legal Services Committee.

- 4) Shri Anand Kumar Gupta, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court has appointed Shri Anand Kumar Gupta, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
- 5) Case of the prosecution in brief is that on the date of incident i.e. on 07/03/1995 at about 09:30 PM, accused/appellant Nilu @ Hardas Ramchandani sent his nephew (Bhanja) Amit Kumar to the house of prosecutrix aged about 28 years and intimated her that her husband has been released on bail and she is required to go to Police Station for verification and signing certain documents. Thereafter, prosecutrix alongwith her 2½ years child, Amit Kumar and the appellant were going towards Tatiband in a Rikshaw, on the way near Kali Mandir accused/appellant dropped his nephew and took away prosecutrix near shrubs and threatened the prosecutrix to commit murder of her child and thereafter committed forcible sexual intercourse with her. After the incident, in the same night on 08/03/1995 around 04:30 AM prosecutrix lodged FIR vide EX. P-2. As per Ex. P-4 Seizure Memo one underwear seized by the Police Officer. After due investigation charge sheet was filed against accused under section 364, 366 and 376 of IPC.
- 6) Learned Trial Court framed charges under sections 364, 366 and 376 of IPC but accused denied the charges. The prosecution examined PW-01 Dr. Bose, PW-02 Prosecutrix, PW-03 Amit Kumar nephew of accused/appellant, PW-04 Dr. Subhas Pandey who examined the accused, PW-05 Nirmala Chatwani, PW-06 Vijay Kumar Ahuja and PW-07 Sandhya Dwivedi I.O.
- 7) The statements 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 implications. However, no witness

was examined by them in their defence.

- 8) Learned counsel for the appellant submits that learned Sessions Court wrongly convicted the accused/appellant and sentenced him. He also submits that as per Medical Report Ex. P-1 no any sign of forcible sexual intercourse was found on the body of the prosecutrix and no any independent eye witness has supported the prosecution case. He further submits that learned Trial Court without considering the evidence of PW-05 Nirmala Chatwani who turned hostile, pass the impugned judgment. Therefore, no offence is made out against appellant and he deserves to be acquitted of the charges.
- 9) On the other hand learned counsel for the State/respondent supports the impugned judgment of the Trial Court and submits that the learned Session Judge rightly convicted the appellant looking to the trustworthy evidence of the prosecutrix.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) In the instant case PW-02 has proved this fact that her husband Vijay Kumar was in jail prior to the incident and accused informed her through his nephew that she is being called for verification regarding her relation with Vijay Kumar and on the basis of information given by accused/appellant that her husband was sitting in the office of the counsel, the prosecutrix alongwith her child and Amit Kumar nephew of the appellant went to Tatiband. Thereafter, accused dropped his nephew, who is PW-03 Amit Kumar and thereafter appellant, prosecutrix and her child went towards Kali Mandir Chowk. However, on the way the appellant asked the Rikshaw puller to go away and took the prosecutrix towards bushes (dark area). There the accused threatened the prosecutrix, gagged the mouth of her child of 2 and ½ years and committed forcible sexual intercourse with her.
- 12) As per statement of prosecutrix PW-02 there is no enmity between prosecutrix and appellant and as such, there is no

reason with the prosecutrix to falsely implicate the appellant. Statement of the prosecutrix PW-02 is un-controverted in cross-examination. She firmly proved the fact as mentioned in FIR Ex. P-2 lodged by her and story narrated by her after incident to the Police Officer.

- 13) PW-03 Amit Kumar, nephew of the accused/appellant, also supported the prosecution case and on the request of the appellant he called the prosecutrix and thereafter prosecutrix, Amit Kumar alongwith accused/appellant went towards Tatiband and accused dropped Amit Kumar PW-03 on the way near Kali Mandir. As per statement of the prosecutrix on the request of Amit Kumar she believed that Nilu @ Hardas Ramchandani is calling for some verification regarding her husband Vijay Kumar who was said to be sitting in the office of the counsel and accordingly she accompanied the appellant. Thereafter, the accused committed rape with the prosecutrix on the threaten of killing her child with a knife. There is no any reason to disbelieve the statement of prosecutrix. Her evidence is duly supported by Amit Kumar (PW-03). Her husband Vijay Kumar (PW-06) also supported her version stating that after the incident the entire story was narrated by prosecutrix to him and that near bushes the accused on the point of knife committed rape with the prosecutrix. PW-06 husband of the prosecutrix also stated that accused called her wife in the office of counsel for signing the bail papers. There is no reason to disbelieve the statements of PW-02, PW-03 and PW-06.
- 14) In the matter of **Vijay Alias Chinee V/s State of Madhya Pradesh reported in (2010) 8 SCC 191**, the Hon'ble S.C. observed as under:-

9. *In State of Maharashtra Vs. Chandraprakash Kewalchand Jain AIR 1990 SC 658, this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of*

an accomplice. The Court observed as under :- (SCC p. 559, para 16)

“16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”

10. *In State of U.P. Vs. Pappu @Yunus & Anr. (2005) 3 SCC 594, this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under :- (SCC p. 597, para 12)*

“12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.”

11. *In State of Punjab Vs. Gurmit Singh & Ors. AIR 1996 SC 1393, this Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under :- (SCC pp. 394-96 & 403, paras 8 & 21)*

“8. The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.....The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or

even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.....Seeking corroboration of her statement before replying upon the same as a rule, in such cases, amounts to adding insult to injury.....Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

* * * * *

21.The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

12. *In State of Orissa Vs. Thakara Besra & Anr. AIR 2002 SC 1963, this Court held that rape is not mere a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.*

13. *In State of Himachal Pradesh Vs. Raghubir Singh (1993) 2 SCC 622, this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan Vs. State of Madhya Pradesh (2010) 2*

SCC 9, placing reliance on earlier judgment in Rameshwar Vs. State of Rajasthan AIR 1952 SC 54.

14. *Thus, the law that emerges on the issue is to the effect that statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.*

- 15) In this case prosecutrix statement is supported and corroborated by Ex. P-2 i.e. promptly lodged FIR by the Prosecutrix.
- 16) Then from the evidence it stands proved beyond all reasonable doubt that on the false pretext of verifying the documents concerning the bail papers that her husband is sitting in the office of the counsel and calling for verification, accused abducted/kidnapped the prosecutrix without her consent, took away inside the bushes and committed rape with her.
- 17) In the result, the appeal being bereft of any substance is liable to be and is, accordingly, dismissed.
- 18) Considering the facts and circumstances of the case vide detailed order dated 04/07/2019 cancelled the bail granted to the appellant as per order dated 30/06/1999 and directed the concerned Chief Judicial Magistrate to take action under section 446 of Cr.P.C. The appellant was directed to be taken into custody forthwith. However, the compliance report is still awaited.
- 19) The Trial Court to verify as to whether the appellant has been taken into custody in compliance of order by this Court dated 04/07/2019 and if not, it is to take necessary steps for sending the appellant back to jail for serving out the remaining part of the sentence imposed upon him by the Trial Court.

**-Sd/-
(Gautam Chourdiya)
Judge**