

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2760 of 1999**

- Tibal Ram, S/o Jangu, aged about 20 years, R/o Village Bajadih, Police Station Shankargarh. District – Surguja (M.P.)

---- Appellant**Versus**

- State of Madhya Pradesh (now Chhattisgarh) through Police Station – Shankargarh, District Surguja (M.P.)

---- Respondent

For Appellant	:Shri Sudhir Bajpai, Advocate
For Respondent/State	:Shri Aditya Bharawaj, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

08.08.2019

(1) This appeal is directed against the judgment of conviction and order of sentence dated 31.08.1999 passed by First Additional Sessions Judge, Ambikapur, District- Surguja in Sessions Trial No. 383/98, convicting the accused/appellant under Section 376 (1) of the Indian Penal Code, 1860 and sentencing him to undergo rigorous imprisonment for five years.

(2) Briefly stated facts of the case are that on 09.11.1998 prosecutrix (PW-2) lodged FIR (Ex.P-2) alleging therein that on 09.11.1998 at about 10 A.M. when she was grazing her goats in the forest, at that time accused, came there and after removing his half-paint and sleeper, forcefully committed sexual intercourse with her against her will and when she was crying, her husband came on the spot and after seeing her husband, the accused/appellant fled away from the place of occurrence. Prompt FIR (Ex. P-2) was lodged by the

prosecutrix on the same day i.e. 9.11.1998; and as per medical examination (Ex.P-3) conducted by Dr. (Smt.) J. Kujur (PW-4), she found wrist injuries, which occurred 7 to 8 hours prior to medical examination. Accused was also examined by Dr. Josheph (PW-5) and medical report of the accused/appellant is submitted vide Ex. P/6.

(3) After investigation charge-sheet was filed against the accused appellant, whose name was mentioned in the FIR under Sections 376 of the Indian Penal Code.

(4) After filing of chargsheet, the trial Judge framed charge against the accused under Sections 376 (1) of the Indian Penal Code and the prosecution examined as many as six witnesses in support of its case namely Ramkumar (PW-1), Phuleshwari (PW-2), Kerul (PW-3), Dr. (Smt.) J. Kujur (PW-4), Dr. Joseph Lakda (PW-5) and R.N. Singh (PW-6); statement of the accused is also recorded under Section 313 of Cr.P.C in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implications. In support of his case he examined three defence witnesses namely- Jhanga (DW-1), Kasmarhin (DW-2) and Mukandar (DW-3).

(5) Learned trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment convicting and sentenced the appellants as mentioned in para one of this judgment.

(6) Learned counsel for the accused/appellant would submit that the accused has been falsely implicated in the crime in question due to some land dispute between accused/appellant and husband of the prosecutrix. He submits that at the time of incident Jhanga (DW-1) was present and he also found the appellant was sitting at the place of occurrence with the prosecutrix

and at the relevant point of time, husband of the prosecutrix came there with axe and due to fear and pressure, the accused/appellant ran away from the place of occurrence then at that time, the husband of prosecutrix beaten her and due to which she sustained multiple injuries on her thigh. He assaulted the prosecutrix with the blunt part of the axe therefore, the injuries, which were found on the body of the prosecutrix, caused by her husband. No other eyewitness was supported the case of the prosecution; no fair investigation was conducted by the Investigating Officer in the matter and statements of the prosecution witnesses suffer from omissions and contradictions, therefore, they are not liable to be relied upon by the trial Court for convicting and sentencing the accused/appellant as aforementioned. He further submits that case of the prosecution was not supported by any clinching evidence, witness and defence witness proved the probable defence of the appellant/accused, therefore, learned Trial Court has committed illegality in convicting and sentencing the accused/appellant for the aforesaid offence by not appreciating the evidence available on record in its proper perspective.

(7) On the other hand, learned counsel for State would support the judgment of the trial Court convicting and sentencing the accused/appellant for the offence punishable under Section 376(1) of the Indian Penal Code.

(8) I have heard learned counsel appearing for the parties and perused the record of trial Court.

(9) As per First Information Report (Ex. P/2) lodged by prosecutrix (PW-2), incident occurred on 09.11.1998 at about 10 am. She stated in para 1, 2 & 3 of her statement that when she was grazing her goats in the forest and she was sitting on stone at that point of time, accused/appellant was coming near the prosecutrix and forcefully thrown her on field and committed forcefully intercourse with her and when she was crying, her husband came at the place

of incident and chasing the accused/appellant. Just after the incident she lodged the FIR vide Ex. P/2 i.e. within five hours of the incident. Thus, as per statement of the prosecutrix she was forcefully caught hold by the accused/appellant and thrown on the field and thereafter committed sexual intercourse she sustained injury on her hand back and elbow.

- (10) Dr. J. Kujur (PW-4) in his medical report (Ex.P-3) opined following three injuries on the person of the prosecutrix, which read thus :-
- (i) One abrasion in the size of 3 c.m. x 1 c.m. on her right wrist.
 - (ii) One abrasion in the size of 1 c.m. x 1/2 c.m. on right elbow
 - (iii) One contusion in the size of 4 c.m. x 1.5 c.m. on her upper backside, which was red in colour.

All the aforesaid injuries were caused within 7 to 8 hours prior to medical examination. Even Dr. J. Kujur (PW-4) also stated that probably sexual intercourse committed with the prosecutrix (PW-2).

- (11) Dr. Joseph (PW-5), who examined the accused/appellant, has opined that the accused/appellant is fully capable to perform sexual intercourse. R.N. Singh, Investigating Officer (PW-6) proved that FIR lodged by the prosecutrix. The main defence was taken by the appellant/accused that when he was sitting along with the prosecutrix, husband of the prosecutrix came there and chasing the accused/appellant and due to which, he ran away from the place of occurrence. Jhanga (DW-1) also stated in his evidence that accused/appellant ran away from the place of occurrence after leaving his paint and sleeper. As per version of defence witnesses i.e. Jhanga (DW-1), Kasmarhin (DW-2) and Mukandar (DW-3), husband of the prosecutrix beaten on thigh of the prosecutrix by means of wooden part of the axe but no injuries were found on the thigh of the prosecutrix. Thus, Looking to the injury sustained by the prosecutrix in her right wrist elbow and backside, it is clearly established that the

prosecutrix was present at the time of incident and accused was fleeing from the place of occurrence and he (Tibal Ram) also seen by the defence witness and looking to the medical report vide Ex. P/3, injuries found on the body of the prosecutrix not due to the husband of the prosecutrix has beaten her with the wooden part of the axe, she (prosecutrix) sustained injuries on the thigh. Furthermore, no any previous enmity was there between the appellant and the husband of the prosecutrix.

(12) It is well settled principle of law that in the cases of sexual assault conviction can be based on the sole testimony of the prosecutrix even in absence of any injury on her person or any other corroborative piece of evidence provided the evidence of the prosecutrix/victim inspires confidence of the Court and is free from the suspicion of falsity.

(13) The Supreme Court in the matter of **State of Punjab Vs. Gurmit Singh and Others** reported in (1996) 2 SCC 384 held that “Evidence of a victim of Sexual assault- Corroboration not necessary- Conviction can be founded on her testimony alone unless there are compelling reasons for seeking corroboration- Court may look for some assurance of her statement to satisfy its judicial conscience and no corroboration is required yet there is sufficient corroboration from the medical evidence.”

(14) In the instant case, the prosecutrix examined by the doctor and her medical report supports the case of the prosecution. The prompt FIR also lodged by her and her statement is corroborated with the medical report & material available on record therefore, learned trial Court is absolutely justified in convicting and sentencing the accused/appellant for the aforesaid offence and I do not find any error in the impugned judgment warranting interference in the instant appeal.

(15) In the result, appeal being devoid of merit, is liable to be and is hereby dismissed. Appellant is reported to be on bail, therefore, his bail bonds stands

canceled and he is directed to be taken into custody forthwith to serve out the remaining part of the sentence.

Sd/-

(Gautam Chourdiya)
Judge