

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 19-8-2019****Pronounced on 21-8-2019****CRA No. 1851 of 2000**

(Arising out of judgment of conviction and order of sentence dated 14/07/2000 passed by the Second Additional Sessions Judge, Balodabazar, District Raipur (M.P.) (Now in Chhattisgarh) in S.T. No. 223/1999)

Daulatram Patel son of Mahetram Patel, aged about 21 years, R/o. Village Taranga, PS Bhatapara Gramin, Distt. Raipur

---- Appellant**Versus**

State of M.P. (now CG) through PS Bhatapara Gramin, Distt. Raipur

---- Respondent

For Appellant	:	Mr. Utkal Pradhan, Adv.
For State	:	Mr. Vinod Tekam, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, J.**C.A.V. JUDGMENT**

1. Challenge in this appeal is levied to the judgment of conviction and order of sentence dated 14/07/2000 passed by the Second Additional Sessions Judge, Balodabazar, District Raipur (M.P.) (Now in Chhattisgarh) in S.T. No. 223/1999 whereby and whereunder, he has convicted and sentenced the appellant as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
450 IPC	5 Years	Rs.1,000/-	6 months SI
376 IPC	7 Years	Rs. 1,000/-	6 month SI

Both the jail sentences have been directed to run concurrently.

2. In brief, the prosecution story is that on at the time of alleged incident prosecutrix was 20 years of age. She was resident of village Tarenga. On 05/03/1999 at about 9.00 p.m. she was lying in her room. Her old aged mother in law was sleeping after two rooms. Her husband, her father-in-law and mother-in-law were not present in the house. Her two sister-in-law and one year old daughter were playing out of the house. Appellant entered in her house and demanded a glass of water. After drinking the water he threw the glass, caught hold her, took her by

pulling inside the room. When she tried to shout he gagged her mouth by piece of cloth. He showed knife her and threatened to kill her. Thereafter, he committed forcible sexual intercourse with her and thereafter ran away. She shouted to call her mother in law, when she came prosecutrix narrated him the incident. After three days her husband came then she narrated him the incident. She and her husband thought that matter would be resolved in village. Thereafter on 12/03/1999 at about 8.30 p.m. she lodged an FIR in Police Station Bhatapara (Rural) against him. After completion of the investigation, a charge sheet was filed against him for the offences punishable under Sections 450, 376 of IPC. The trial Court framed the charges against him under Section 450, 376 of the IPC. He abjured the charges and faced the trial. To bring home the charges against him, the prosecution examined as many as 12 witnesses. He examined 4 witnesses on his defence. After conclusion of trial, the trial Court convicted and sentenced him as mentioned above.

3. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant has preferred this criminal appeal.

4. Counsel for the appellant submits that the appellant has been falsely implicated on rivalry. No rape has been committed by him with the prosecutrix. Trial Court has not properly appreciated the evidence available on record in proper perspective. FIR is delayed. Therefore, the impugned judgment of conviction and order of sentence may be set aside and he may be acquitted of the aforesaid charges.

5. On the other hand, the Panel Lawyer appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. Hence, the appeal may be dismissed.

6. As per the alleged MLC report Ex. P-4, P.W. 5 Dr. Smt. Reeta Chaba had examined prosecutrix on 12-3-1999 and found one contusion size 1 cm x ½ cm over left side of back level of 7th and 8th ribs. Hymen old tear. She opined that no definite opinion about rape can be given, injury was simple in nature and caused by hard and blunt object.

7. There is no such evidence on record on strength of which it can be said that Ex. P-4 is not believable in reference to the above. Thus, this Court believes on Ex. P-4 in the reference to the above.

8. As per the alleged MLC report Ex. P-6, P.W. 6 Dr. Rakesh Chaba had examined the appellant and opined that he is capable to perform sexual intercourse.

9. There is no such evidence on record on strength of which it can be said that Ex. P-6 is not believable. Thus, this Court believes on Ex. P-6.

10. As per the alleged seizure Ex. P-3, P.W. 12 Ramkrishna Dubey, the then Sub Inspector, Police Station Bhatapara (Rural) had seized one underwear from the possession of the appellant.

11. There is no such evidence on record on strength of which it can be said that Ex. P-3 is not believable. Thus, this Court believes on Ex. P-3.

12. As per the alleged seizure Ex. P-9, P.W. 12 Ramkrishna Dubey had seized one petticoat from the possession of the prosecutrix.

13. There is no such evidence on record on strength of which it can be said that Ex. P-9 is not believable. Thus, this Court believes on Ex. P-9.

14. As per the alleged seizure Ex. P-10, one vaginal slide of prosecutrix, one vaginal swab of prosecutrix were seized from Constable Ratneshwar Rao.

15. There is no such evidence on record on strength of which it can be said that Ex. P-10 is not believable. Thus, this Court believes on Ex. P-10.

16. As per alleged RFSL report Ex. P-15, on article A petticoat, article B slide, article C swab and article D underwear, semen and sperm were found.

17. There is no such evidence on record on strength of which it can be said that Ex. P-15 is not believable. Thus, this Court believes on Ex. P-15.

18. P.W. 9 Prosecutrix says in para No. 1, 4, and repeated para 5 (para no. 5 is wrongly mentioned twice) and 6 of her statement given on oath that in the night appellant had come, her husband, her father in law, her mother in law were not present in the house, her sister in law was playing out of the house. Her mother in law was in another room. He caught hold her, threatened her by showing knife, committed sexual intercourse with her inside the room. On her shouting her mother in law

had come near her slowly. She narrated the incident to her in the same night. Injury was caused on her back.

19. P.W. 1 Laxmi Bai who is mother in law of prosecutrix says in para No. 1 and 2 of her statement given on oath that on hearing of shouts of prosecutrix she woke up. Prosecutrix told her that appellant had caught hold her and ran away after committing rape with her. She further states that she had narrated the incident to her son.

20. P.W. 2 Punniram who is son of the P.W. 1 Laxmi Bai says in para No. 1 of his statement given on oath that P.W. 1 Laxmi Bai had told him that appellant had committed rape with prosecutrix.

21. P.W. 4 Budhram who is husband of the prosecutrix says in para No. 1 of his statement given on oath that prosecutrix had told him that appellant had come in the night and overpowered her.

22. D.W. 1 Shiluram, D.W. 2 Mantram, D.W. 3 Kachrabai, D.W. 4 Punaudas, say in para No. 1 and 2 of their statements given on oath that on 5-3-1999 appellant and some other persons had come to village Jevra, to see the girl for marriage, they stayed in the night in the house of D.W. 1 Shiluram, they returned back from there on 6-3-1999.

23. Hon'ble Supreme Court in the matter of **Munna -v- State of M.P.** [(2014) 10 SCC 254] observed in para 11 as under :-

“11. Thus, while absence of injuries or absence of raising alarm or delay in FIR may not by itself be enough to disbelieve the version of prosecutrix in view of the statutory presumption under Section 114-A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its veracity, the same may not be acted upon. We are conscious of the sensitivity with which heinous offence under Section 376 IPC has to be treated but in the present case the circumstances taken as a whole create doubt about the correctness of the prosecution version. We are, thus, of the opinion that a case is made out for giving benefit of doubt to the accused.”

24. Hon'ble Supreme Court in the matter of **Radhu Vs. State of M.P.** [(2007)12, SCC 57], laid down following judicial precedent :-

“A finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix and her testimony should not be rejected on the basis of minor discrepancies and

contradictions. Absence of injuries on the private parts of the victim will not by itself falsified the case of rape, nor can be construed as evidence of consent nor the opinion of a doctor that there was no evidence of any sexual intercourse or rape, sufficient to disbelieve the victim. However courts should , at the same time, bear in mind that false charges of rape are not uncommon, and there are some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

25. Hon'ble Supreme Court in the matter of **Raju and others -v- State of MP** [(2009) 3 SCC(Cri) 751]], held that testimony of the prosecutrix is believable on a par with that of an injured witness, her testimony cannot always be presumed to be gospel truth. Possibility of exaggeration or embellishment or false implication where several persons are accused cannot be ruled out. Possibility of immoral past of prosecutrix based on evidence can be considered.

26. In the matter of **Mohd. Ali -v- State of UP** [2015 (7) SCC 272], Hon'ble Supreme Court observed in para 30 as under :-

“**30.** True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony.”

27. Though, as per the Ex. P-4, no definite opinion can be given regarding rape, but looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Radhu** (supra) it cannot be said that prosecutrix was allegedly a 'free consenting party'.

28. P.W. 1 Laxmibai says in para 3 during her cross-examination that this is true that on that day she slept, thus the prosecutrix had not told her anything, 8-10 days after when prosecutrix and her husband were whispering, she came to know about the incident.

29. P.W. 1 Laxmibai is an old, illiterate village woman. She made

aforesaid statement of para 3, on giving suggestion by the counsel of the appellant during her cross-examination. Thus, this Court finds that from the aforesaid statement of para 3, the testimony of aforesaid para 1 and 2 of P.W. 1 Laxmibai, does not adversely affect.

30. There are no such omissions and contradictions dealt during cross-examination of P.W. 1 Laxmibai, P.W. 2 Punniram, P.W. 4 Budhram, P.W. 9 Prosecutrix on strength of which it can be said that aforesaid statements of para 1 and 2 of P.W. 1 Laxmibai, Para 1 of P.W. 2 Punniram and P.W. 4 Budhram and Para 1, 4, 5 and 6 of P.W. 9 Prosecutrix are untrustworthy.

31. As per Ex. P-4 the injury was caused within 24 hours. It appears that there is some error in mentioning the duration of injury. But it is not sufficient to discard the aforesaid statement of para 1, 4, 5 and 6 of the P.W. 9 Prosecutrix.

32. As per the alleged FIR Ex. P-8, the husband of the prosecutrix, her father in law and her mother in law were not present in the house. Appellant had entered in her house, caught hold her, threatened her by showing knife, committed forcible sexual intercourse with her. on her shouting her mother in law came there. She narrated the incident to her mother in law. Injury was caused on her back.

33. In the case in hand the alleged date of incident is 5-3-1999 at about 9.00 pm and Ex. P-8 has been lodged on 12-3-1999 at 8.30 pm.

34. In the matter of **State of H.P. -v- Shree Kant Shekari** [2004(8) SCC 153], Hon'ble Supreme Court has held in para 18 as under :-

“18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty

enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspects were highlighted in *Tulshidas Kanolkar v. State of Goa* [(2003) 8 SCC 590] .”

35. The relevant portion of para-13 of **Puran Chand -v- State of H.P.** [(2014) 5 SCC 689] wherein the Hon'ble Supreme Court has made some observation is quoted below :-

“13.The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross-examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR thus stands fully explained.”

36. In the case in hand in Ex. P-8 it has been mentioned that husband of the prosecutrix, her father in law, her mother in law were not present in the house, she had narrated the incident to her husband after 3 days. They thought, the matter would be resolved in the village thus, she did not come to police station earlier. P.W. 9 says in para 1 that her husband returned back 2 – 3 days after. There is no such evidence on record on strength of which it can be said that said explanations are not simple, not natural and not normal. Moreover, in the Indian society it is very natural conduct that normally a report of alleged rape is lodged after consultation with the head of the family because honour and reputation of the family are involved in such a matter. If he is not present then other family members wait for him. In these circumstances this Court finds that delay in lodging Ex. P-8 is satisfactorily explained and convincing. Thus looking to the aforesaid judicial precedents laid down Hon'ble Supreme Court in the matters of **Shree Kant Shekari** (supra), **Puran Chand** (supra) and **Munna** (supra), this Court finds that delay in lodging Ex. P-8 is not fatal to the prosecution case.

37. There is no such evidence on record on strength of which it can be said that Ex. P-8 is fabricated or concocted to falsely implicate the appellant in alleged offences.

38. P.W. 3 Smt. Urmila Bai says in para 4 during her cross-examination that this is true that appellant had lodged the report about quarrel against her husband and his son.

39. In the matter of **State of HP -v- Shree Kant Shekari** (supra) the Hon'ble Supreme Court has dealt with the false implication, the relevant portion of para 22 reads as under :-

“22. In any event no girl of a tender age and her parents would like to jeopardise her entire future by falsely implicating a person alleging forcible sexual intercourse”.

40. In the matter of **Balwant Singh Vs State of Punjab** [(1987) 2 SCC 27] Hon'ble Supreme Court has laid down the following judicial precedent-

“Defence case that the father of prosecutrix falsely implicated the accused persons on the ground of litigation and enmity cannot be accepted as it is absurd that on account of litigation father of prosecutrix would falsely involve his daughter in case of rape by the appellant”.

41. Looking to the above mentioned facts and circumstances of the case and looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Shree Kant Shekari** (supra) and **Balwant Singh** (Supra), it is absurd that on account of such report, prosecutrix family would stake their reputation and honour and falsely implicate the appellant, through prosecutrix.

42. In the case in hand on behalf of the appellant, during the cross-examination of P.W. 9 prosecutrix the suggestion was given to her in para 3 that her husband and appellant had gone to watch movie. Moreover, there is no such evidence on record on strength of which it can be said that it was totally impossible for appellant to reach on the spot at the alleged time of incident from village Jevra.

43. This has been earlier decided that prosecutrix was not free consenting party.

44. There is no such evidence on record on strength of which it can be said that aforesaid statements of para 1 and 2 of P.W. 1 Laxmibai, para 1 of P.W. 2 Punniram and P.W. 4 Budhram, para 1, 4, 5 and 6 of P.W. 9 prosecutrix are not simple, not natural and not normal.

45. On the basis of aforesaid judicial precedents laid down by

Hon'ble Supreme Court in the matter of **Munna** (supra), **Radhu** (supra), **Raju and others** (Supra), **Mohd. Ali** (supra), this Court finds that this Court can act upon aforesaid sole testimony of para 1, 4, 5 and 6 of P.W. 9 prosecutrix.

46. In the case in hand, aforesaid statement of para 1, 4, 5 and 6 of prosecutrix get corroboration from para 1 and 2 of P.W. 1 Laxmibai, para 1 of P.W. 2 Punniram and P.W. 4 Budhram, Ex. P-3, Ex. P-4, Ex. P-6, Ex. P-8, Ex. P-9, Ex. P-10, Ex. P-15.

47. After the appreciation of the evidence discussed herebefore this court believes on aforesaid statements of para 1 and 2 of P.W. 1 Laxmibai, para 1 of P.W. 2 Punniram and P.W. 4 Budhram, para 1, 4, 5 and 6 of P.W. 9 Prosecutrix and disbelieves aforesaid statements of para 1 and 2 of D.W. 1 Shiluram, D.W. 2 Mantram, D.W. 3 Kachrabai, D.W. 4 Punaudas in the reference that at the time of alleged incident, appellant was present at village Jevra and he has falsely implicated in the case.

48. After appreciation of the evidence discussed herebefore this Court finds that the prosecution has succeeded to prove beyond reasonable doubt the charges punishable under Section 450, 376, IPC against the appellant. There appears no reason to interfere in the quantum of sentence awarded by the trial Court also. Thus, aforesaid conviction and sentences are affirmed.

49. The appeal being devoid of merit deserves to be and is hereby dismissed.

50. The appellant is reported to be on bail. His bail and bonds are canceled. He is directed to surrender immediately before the trial Court for undergoing the remaining part of sentences, if any. The trial Court is also directed to take the appellant in custody immediately for undergoing the remaining part of sentences, if any.

Sd/-
(Sharad Kumar Gupta)
Judge