

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 5-4-2019****Pronounced on 11- 4-2019****CRA No. 534 of 2003**

(Arising out of judgment and order dated 31-3-2003 passed by the Additional Sessions Judge, Mungeli Sessions Division Bilaspur, Distt. Bilaspur, CG in ST No. 16/2003)

Domara Prasad S/o Shobhit Ram, Aged about 50 years, R/o Village Goindi, Police Station : Patharia, Dist: Bilaspur, C.G.

---- Appellant**Versus**

State of Chhattisgarh through Police Station : Patharia, Distt: Bilaspur, Chhattisgarh

---- Respondent

For appellant	:	Mr. Rajnish Shrivastava, Adv. Appears on behalf of Mr. Amit Singh, Adv.
For State	:	Mr. Wasim Miyan, 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 31-3-2003 passed by the Additional Sessions Judge, Mungeli Sessions Division Bilaspur, Distt. Bilaspur, CG in ST No. 16/2003 whereby and whereunder he has convicted and sentenced the appellant as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
376, IPC	7 Years	Rs. 1,000/-	6 months RI
450, IPC	3 Years	Rs. 1,000/-	3 months RI
506-B, IPC	1 Year	Rs. 500/-	1 month RI

All the jail sentences have been directed to run concurrently.

2. This is admitted by the appellant that P.W. 7 Dr. P.K. Singh had examined his genital organ.

3. In brief, the prosecution story is that at the time of alleged incident prosecutrix was 26 years old. She was resident of village Goindi. On 27-7-2002 at about 11-12 hours, prosecutrix was washing utensils in her house. Appellant came in her house along with axe, threatened her to kill, committed forcible sexual intercourse. When she

tried to save herself, she sustained injury on her elbow and her bangles were also broken. After sometimes, her brother-in-law Devnath came, she informed him about the incident. On very day she gave an application to PS Pathariya where an FIR was registered against him. After completion of the investigation, a charge sheet was filed against him for the offences punishable under Sections 323, 376, 506-B, 450, of the Indian Penal Code (in brevity 'IPC'). The trial Court framed the charges against him under Sections 450, 376, 506(2) of the IPC. He abjured the charges and faced the trial. To bring home the charges against him, the prosecution examined as many as 10 witnesses. He examined 2 witnesses in his defence. After conclusion of trial, the trial Court convicted and sentenced him as mentioned above.

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

5. Counsel for the appellant submits that the appellant has been falsely implicated. No rape has been committed by him with the prosecutrix. Trial Court has not properly appreciated the evidence available on record in proper perspective. The evidence of the prosecutrix is not supported by medical report. She was the consenting party. All the prosecution witnesses are interested witnesses. Appellant had given evidence against the husband of prosecutrix in a murder case, in counter, the prosecutrix and her family members had given the evidence against him. The FIR is delayed and no reasonable explanation has been given by the prosecution. Therefore, the impugned judgment of conviction and order of sentences may be set aside and he may be acquitted of the charges.

6. 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.

7. As per the alleged MLC report Ex. P-1, P.W. 1 Dr. Sushma Agrawal had examined prosecutrix and found minor scratch was present on both elbows, injury was simple in nature and caused by hard and rough surface, no external injury was present on her vulva and vagina, she was multi- parous women and habitual to sexual intercourse, no definite opinion could be given regarding recent sexual intercourse.

8. There is no such evidence on record on strength of which it can be said that Ex. P-1 is not believable. Thus, this Court believes on Ex. P-1.

9. As per the alleged seizure Ex. P-4, P.W. 8 L. Tigga, Sub Inspector had seized 11 pieces of broken bangles from the spot.

10. There is no such evidence on record on strength of which it can be said that Ex. P-4 is not believable. Thus, this Court believes on Ex. P-4.

11. As per the alleged MLC report Ex. P-10, P.W. 7 Dr. P.K. Singh opined that no injury was present on penis, smagma, and seminal vesicle fluid was not present on penis, he was capable to perform sexual intercourse.

12. 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.

13. P.W. 4 Prosecutrix says in para 1 and 2 of her statement of given on oath that she was washing the utensils in the house, appellant entered into her house holding an axe. He threatened her to kill and committed forcible sexual intercourse with her. When she tried to save herself, she sustained injuries on her both elbows, her bangles were also broken.

14. P.W. 2 Devnath says in para 2 of his statement given on oath that when he returned back in his house prosecutrix told him that appellant had come in the house and committed forcible sexual intercourse with her.

15. P.W. 3 Bhagwati Bai who is the mother in law of the prosecutrix says in para 1 of her statement given on oath that after returning back from police station prosecutrix had told her that appellant came in the house holding axe and committed rape with her.

16. P.W. 5 Bedram who is father in law of the prosecutrix says in para 2 of his statement of given on oath that when she returned back in his house, she told him that appellant had come in the house and committed forcible sexual intercourse with her.

17. D.W. 1 Domra Prasad- appellant says in para 1 and 2 of his statement given on oath that in a murder case in which the husband of the prosecutrix was accused, he had gone to Bilaspur court to give

evidence against husband of prosecutrix, where P.W. 2 Devnath and Prosecutrix requested and offered Rs. 10,000/- to him for not giving the statement against husband of the prosecutrix. P.W. 2 Devnath had also threatened him.

18. D.W. 2 Sukhmat Bai says in para 1 and 3 of her statement given on oath that husband of the prosecutrix was convicted for the murder of her husband Gopal at Bilaspur Court. At the time of recording of evidence P.W. 2 Devnath had requested and offered Rs. 10,000/- to appellant for not giving evidence against husband of the prosecutrix.

19. In the matter of **Hari Obula Reddy -v- State of Andhra Pradesh** [1981 (3) SCC 675] Hon'ble Supreme Court has laid down following judicial precedent -

“Even Partisan-ship by itself is not a valid ground for discrediting or rejecting sworn testimony. Interested evidence can form basis of conviction even it is not corroborated on material extent in material particular by independent evidence. What is required is that the evidence of interested witness should be subjected to careful scrutiny and accepted with caution. If on such scrutiny the interested is found to be intrinsically reliable or inherently probable, the conviction can be based on the same.”

20. Looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Hari Obula Reddy** (supra), this Court finds that aforesaid statements of P.W. 2 Devnath, P.W. 3 Bhagwati Bai, P.W. 5 Bedram cannot be rejected solely on the ground of aforesaid relation with prosecutrix. What is needed is that there should be close scrutiny of aforesaid statements of said witnesses.

21. 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.”

22. 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.

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. 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.”

25. As per the Ex. P-1 , P.W. 1 Dr. Sushma Agrawal opined that no injury was present on body of prosecutrix except aforesaid scratch. Looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Radhu** (supra), **Munna** (supra), this Court finds that in the absence of injury on body of prosecutrix except aforesaid scratch, it cannot be said that prosecutrix was allegedly 'free consenting party'.

26. Though as per Ex. P-1, P.W. 1 Dr. Sushma Agrawal opined that

prosecutrix was multi parous woman habitual to sexual intercourse, no definite could be given regarding recent sexual intercourse, but looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Radhu** (supra), this Court finds that said opinion is not sufficient to disbelieve the aforesaid statements of P.W. 4 prosecutrix, P.W. 2 Devnath, P.W. 3 Bhagwati Bai, P.W. 5 Bedram.

27. P.W. 4 prosecutrix says in para No.9 during her cross-examination that this is true that she had not intimated about the incident to village Kotwar or any other person. Looking to the above judicial precedent laid down by Hon'ble Supreme Court in the matter of **Munna** (supra), this Court finds that not informing alleged incident to village Kotwar or any other person by the prosecutrix is not sufficient to falsify the aforesaid statements of P.W.2 Devnath, P.W.3 Bhagwati Bai, P.W.4 prosecutrix P.W.5 Badram.

28. P.W.4 prosecutrix says in Para No.14 that she had scratched appellant. As per Ex.P-10 no injury was found on body of appellant. These circumstances are not sufficient to say that prosecutrix was allegedly 'free consenting party'.

29. 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”.

30. P.W.2 Devnath says in Para No.4 during his cross-examination that this is true that Megnath is in jail in murder case, a trial is going on in Bilaspur Court, in that case appellant was witness, one month prior to alleged incident appellant had given the evidence in that case. P.W.3 Bhagwati Bai says in Para No.2 during her cross-examination that Megnath is in jail in a murder case. P.W.4 prosecutrix says in Para No.10 that, this is true that a murder case is pending in Bilaspur Court. P.W.5 Badram says in Para No.4 during his cross-examination that a murder case of Gopal is pending against Megnath who is in jail.

31. There is no such evidence on record on strength of which it can be said that prosecutrix had given application Ex.P-6, P.W. 2 Devnath

had made aforesaid statements of Para No.2, P.W.3 Baghwati Bai had made aforesaid statement of Para No.1, P.W.4 prosecutrix had stated aforesaid statement of Para No.1 and 2, P.W.5 Badram had stated aforesaid statement of Para No.2, merely because husband of prosecutrix was facing criminal trial for the murder of Gopal in Bilaspur Court, in this case appellant had given the evidence against husband of prosecutrix ultimately he was convicted, knowingly that appellant had not committed any crime. Moreover, it is absurd that on account of giving evidence by appellant against husband of prosecutrix in murder case who was convicted by the Court, P.W.2 Devnath, P.W.3 Baghwati Bai, P.W.4 prosecutrix, P.W.5 Badram would falsely involve appellant in alleged crime. In these circumstances, the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Balwant Singh** (supra) is applicable in favour of prosecution case and against the appellant's case.

32. No such omissions and contradictions have been dealt during the cross-examination of P.W.-2 Devnath, P.W.3 Baghwati Bai, P.W.4 prosecutrix, P.W.5 Badram which can adversely affect the testimony of P.W.2 Devnath in Para No.2, P.W.3 Baghwati Bai in Para No.1, P.W. 4 Prosecutrix in Para No. 1 and 2 and P.W.5 Badram in Para No.2.

33. 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 : 2004 SCC (Cri) 44] .”

34. 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.”

35. In Ex. P-6 it has been mentioned that the appellant holding an axe entered in the house of prosecutrix, threatened her to kill and committed forcible sexual intercourse with her, during to save herself she sustained injuries on elbow and her bangles were also broken.

36. The alleged incident took place on 27.07.2002 at about 11:12 a.m. Ex.P-6 was given on very day. As per the Para No.8 of prosecutrix she had given Ex.P-6 at about 1:00-1:30 p.m. in alleged FIR in Ex.P-7 it has been mentioned that the reason for delay is that prosecutrix was alone in the house. As per the aforesaid statements of P.W.2 Devnath, P.W.3 Bhagwati Bai, P.W. 4 prosecutrix, P.W.5 Bedram, prosecutrix was alone in the house. Moreover, in such a situation it is normal and natural human conduct that prosecutrix allegedly become upset. Thus, this Court finds that delay in giving Ex. P-6 is satisfactory and convincing. Thus, looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Shree Kant Shekari** (supra), **Puran Chand** (supra) and **Munna** (supra), this Court finds that delay in giving Ex. P-6 is not fatal to the prosecution case.

37. There is no such evidence on record on the strength of which it can be said that Ex. P-6 is fabricated or concocted to falsely implicate the appellant in alleged offences.

38. This has been earlier decided that prosecutrix was not a free consenting party. After the appreciation of the evidence discussed herebefore, this Court finds that aforesaid statements of para No.2 of P.W. 2 Devnath, Para 1 of P.W.-3 Baghwati Bai, Para 1 and 2 of prosecutrix, para No.2 of P.W.-5 Badram are simple, natural, and normal. Thus, on the basis of aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Radhu** (supra), **Mohd. Ali** (supra), **Raju and others** (supra) and **Munna** (supra), this Court finds that this Court can act upon aforesaid sole testimony of para 1 and 2 of

P.W. 4 Prosecutrix.

39. In the case in hand, the aforesaid statements of para 1 & 2 of prosecutrix gets corroboration from the aforesaid statements of para 2 of P.W.2 Devnath, Para No.1 of P.W.-3 Baghwati Bai, Para No. 2 of P.W.5 of Badram, Ex.P-1, Ex.P-4, Ex.P-6, Ex.P-10.

40. After the appreciation of the evidence discussed herebefore, this Court believes on para 2 of P.W. 2 Devnath, Para 1 of P.W.3 Baghwati Bai, Para 1 and 2 of prosecutrix, Para 1 of P.W.5 Badram.

41. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove beyond reasonable doubt that appellant had committed house trespass in order to commit rape with prosecutrix which is punishable with imprisonment for life, and committed rape with prosecutrix, and gave threats to kill her, which are punishable under Section 450, 376 & 506(2) of the IPC respectively. Thus, this Court affirms the judgment of conviction passed by the trial Court.

42. As regards sentences awarded to the appellant for offences punishable under Sections 450, 376(1) & 506(2) of the IPC, considering the facts and circumstances of the case, they appear to be just and proper, and do not call for any interference. Hence, this Court also affirms the sentences regarding Sections 450,376 & 506(2) of the IPC.

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

44. 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. The trial Court is also directed to take the appellant in custody immediately for undergoing the remaining part of sentences.

Sd/-
(Sharad Kumar Gupta)
Judge