

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 653 of 2008**

- Smt. Lalita Devi W/o Hemant Kumar, aged about 24 years, Occupation – house wife, Caste – Koier, R/o Village Parri P.S. & Tahsil – Surajpur, Distt.-Sarguja (CG)

---- Applicant**Versus**

1. Heera Lal Kuchwaha, S/o Nirmal Ram Kuchwaha, aged about 39 years, Occupation – Agriculturist, R/o Village – Parri, P.S. & Tahsil - Surajpur, Distt.-Sarguja, C.G.
2. State of C.G. Through S.H.O., Surajpur, Distt.-Surguja (CG)

---- Respondents

For Applicant	:	Shri D.N.Prajapati, Advocate
For State	:	Shri Subhash Yadav, Dy.G.A.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Order On Board****19/06/2019**

This revision arises out of impugned judgment dated 04/02/2008 passed by the 1st Additional Sessions Judge, Surajpur, District – Sarguja in Sessions Trial No.18/07 by which, the learned Trial Court has acquitted the respondent No.1 / accused of the charges of commission of offence under Section 376 IPC. Present revision has been preferred by the prosecutrix herself.

2. On 12/12/2006, an FIR (Ex.P/3) was lodged by the prosecutrix (PW4) that on 08/12/2006, at about 7 AM, she was subjected to rape by her brother-in-law (Jeth), the accused. According to the prosecutrix, when early in the morning, she had gone

to cattle shed for cleaning, the respondent / accused came from behind and caught hold of her, threatened and then committed rape on her. The respondent / accused was tried for alleged commission of offence. Though the prosecutrix came out with an evidence that she was subjected to rape by the respondent / accused, learned Trial Court acquitted the respondent / accused by giving him benefit of doubt. The impugned judgment reveals that the learned Trial Court found the case of the prosecution doubtful mainly taking into consideration that though the alleged incident had taken place on 08/12/2006, FIR was lodged as late as on 12/12/2006. Learned Trial Court also noticed the conduct of the prosecutrix that though she was a married lady, she did not raise any hue and cry, even though, there were other members of the family. It was also noticed that no injuries were found on any part of the body of the prosecutrix to show any signs of resistance. Learned Trial Court also held that the prosecutrix could have atleast raised an alarm which was also not done. Learned Trial Court acquitted the respondent / accused taking into consideration the contents of FIR, attending circumstances, particularly taking into consideration that the respondent / accused and the prosecutrix were seen coming out from the cattle shed by her sister-in-law (Jethani) and even the daughter of the prosecutrix had seen the two in compromising situation. The prosecution came out with a case of rape, but the Trial Court acquitted, noticing probability that the prosecutrix and the respondent may have been engaged in a consensual sex.

3. Learned counsel for the applicant would argue that the acquittal of the respondent from the charges of commission of offence of rape is guided only by some minor contradictions and omissions and that the prosecutrix did not sustain any bodily injury and there was some delay in lodging FIR. According to learned counsel for the applicant, delay in lodging FIR has been properly and sufficiently explained, both by the prosecutrix (PW4) and her husband – Hemant Kushwaha

(PW5) that on the date of alleged commission of offence, the husband of the prosecutrix was out of station and when he came in the night on 11/12/2006, he was informed regarding the incident and then, on the very next day, FIR was lodged. He would further submit that the prosecutrix has clearly stated that she informed regarding the incident to her mother-in-law and sister-in-law both, who supported her at this stage, which is manifest from their diary statements. Therefore, it cannot be said that delay in lodging FIR was not explained. According to him, it was a case where the prosecutrix was subjected to rape in her own house and in such circumstances, such incidents are not immediately reported as there is tendency to suppress the same as far as possible to save the male members of the family. He further submitted that the law does not require that in order to lay credence to the testimony of the prosecutrix, presence of injury is necessary. The prosecutrix has stated that she was overpowered by giving a threat which means that the prosecutrix had given up and could not offer any resistance nor could cry for any help.

4. Learned counsel for the respondent / accused, supporting the judgment of acquittal, would submit that the argument seeks re-appreciation of evidence on record which is not permissible in revision proceedings. He would argue that the learned Trial Court has meticulously and examined, threadbare, the entire evidence on record, particularly that of the prosecutrix to come to the conclusion that present is a case of consent. This is based on comprehensive assessment of the entire evidence that the prosecutrix is a major lady and her story of having been overpowered by a simple threat is improbable. Learned Trial Court has also taken into consideration that the explanation for delay that her husband was out of station is also doubtful because her husband, in his detailed cross-examination, has made contradictory statement with regard to the place he had gone and also the purpose for which he claimed to have gone out of station and a clear suggestion was given to

him that he is making false story only to explain delay in lodging of FIR. Next submission is that the prosecutrix and the respondent were not alone in the house but there were many other members in the family. Therefore, it is wholly improbable that the respondent could commit forceful act and unless it was the case of consent, it would not have been possible for the respondent to enter into the alleged act. It is also highlighted that the prosecutrix, in the FIR, has clearly stated that while the respondent was coming out of cattle shed, followed by exit of the prosecutrix, they were seen by the sister-in-law as also prosecutrix's own daughter and this aspect has been duly appreciated by the learned Trial Court in the manner that the consensual act of the prosecutrix and the respondent was disclosed when her sister-in-law saw her and the respondent coming out of the cattle shed and fearing disclosure of the consensual act, the prosecutrix came out with a false story of she having been subjected to rape.

5. We have heard learned counsel for the parties and perused the records.

6. Before we advert to the submission with regard to the material on record, we consider it apposite to refer to the Supreme Court decision with regard to the scope of interference in a revision petition. In the case of **Kishan Rao v. Shankargouda, (2018) 8 SCC 165**, it was observed as below -

“11. This Court has time and again examined the scope of Section 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In *State of Kerala vs. Puttumana Illath Jathavedan Namboodiri*, 1999 (2) SCC 452, while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following:

“5.....In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety

of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappraising the oral evidence.....”

12. Another judgment which has also been referred to and relied by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and others*, 2015 (3) SCC 123. This Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in paragraph 14:

”14.....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence.

The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

Keeping in forefront the aforesaid broad principles which are well settled and that unless there is an illegality found in the exercise of jurisdiction and without re-appreciating the evidence, it is found that the judgment is otherwise illegal or causing miscarriage of justice, interference would not be permissible in law.

7. In the FIR lodged by the prosecutrix herself on 12/12/2006, she has disclosed regarding the incident by stating that at about 6 AM in the morning, when she had gone inside the cattle shed to remove cow dung, the respondent came from behind, caught hold of her and committed rape. When he was coming out, he was seen by the sister-in-law - Sushila (Jethani) and then, when the prosecutrix followed and came out of the cattle shed, she informed the incident to Sushila and her daughter. She further states that when her mother-in-law came back from neighbourhood, she was also informed. When her husband came back from Janakpur, the incident has been disclosed and report has been lodged.

What is important to note from the FIR lodged at the instance of the prosecutrix herself is that in the FIR, nothing has been stated that when respondent caught hold of her, she either offered any resistance or cried for help. Moreover, in the FIR, there is nothing to show that she was subjected to any serious threat so much so that she could not offer any resistance and completely surrendered to the

evil desire of the respondent. Importantly, in the FIR, it has been disclosed that when the prosecutrix (the appellant) and the respondent were coming out of cattle shed after the act, they were seen by her sister-in-law (Jethani).

8. The incident is said to have happened on 08/12/2006 early in the morning at 6 AM in the cattle shed adjacent to the house. It is not a case that the prosecutrix and the respondent alone were present in the house. According to the evidence of the prosecution witnesses including the prosecutrix (PW4) and her husband - Hemant Kushwaha (PW5), the house was inhabited not only by the prosecutrix but the family of the respondent, in which the respondent, his wife and children also reside. Moreover, the mother-in-law also resides in the same house. Thus, not only the prosecutrix and her husband, but number of other family members were also resident of the same house.

9. The incident is said to have happened on 08/12/2006 but the FIR was lodged after about four days i.e. on 12/12/2006 and the explanation offered by the prosecutrix (PW4) and her husband - Hemant Kushwaha (PW5) is that on 08/12/2006, her husband was not present in the house and had gone out of station. It is only when he returned on 11/12/2006 in the evening, that the incident was disclosed and report was lodged on 12/12/2006. On this aspect, Hemant Kushwaha (PW5) has been cross-examined in detail and there he has made contradictory statement with regard to place he visited and the purpose for which he went outside and a suggestion has been given that he is making false story only to explain delay in lodging report. This part of the evidence of Hemant Kushwaha (PW5) has been minutely scrutinized by the learned Trial Court and then followed by a conclusion that the prosecution evidence of Hemant Kushwaha (PW5) having remained out of station for about 3-4 days, itself becomes doubtful and more appears to be an

attempt to somehow explain delay in lodging FIR.

10. No injuries have been found on any part of the body of the prosecutrix.

True it is that it is not a thumb rule that in order to lay credence to the evidence of the prosecutrix, it should necessarily be supported from any medical evidence. However, in the present case, the prosecutrix is a major lady and she had a prohibitory relationship with the respondent / accused who happened to be her brother-in-law. Her natural conduct would have been to offer resistance and cry for help. In her evidence, she has stated that as the respondent, on a threat to kill, committed rape and even after that, he stated that if she discloses the event, she would be killed along with her husband. However, this fact has not been stated in the FIR that rape was committed by extending any threat of life by the prosecutrix and her husband. In the FIR, there is no statement regarding any threat given to the prosecutrix. Unless there is clear evidence of threat and that too of such a nature and extent, in such circumstances that one could reasonably presume that it was not possible for anyone to offer any resistance that the allegation of rape could find support. In the present case, the alleged act is said to have taken place in the cattle shed attached to the house, where there are number of residents. The prosecutrix was not a minor girl which could be easily overpowered by any simple threat. Therefore, these circumstances also raise a doubt as to why the prosecutrix did not offer any resistance or atleast cry for help from the members who were present in the house. In this background, absence of injury on any part of the body assumes importance and create doubt on the case of the prosecution. Independently, the contents of FIR show that the respondent and the prosecutrix were coming out of cattle shed after sexual act, they were seen by Sushila – wife of the respondent / accused and also by the prosecutrix's own daughter. Learned Trial Court has taken a view based on this circumstance that as the affair of the prosecutrix and the

respondent was disclosed to other members of the family and infact, her sister-in-law saw both of them coming out of the cattle shed and started making enquiry, that the prosecutrix started leveling allegations against the respondent and therefore, it has become a doubtful case.

11. Learned Trial Court, after taking into consideration the cumulative effect of the aforesaid circumstances and evidence on record, has found present to be a case, not free from doubt that possibility of it being a case of consent could not be ruled out. On this basis, the respondent / accused has been given benefit of doubt and acquitted.

12. The impugned judgment of acquittal granting benefit of doubt to the respondent / accused, therefore, in our opinion, does not appear to be suffering from illegality or in ignorance of any incriminating material on record or contrary to the evidence on record or against settled principles of law so as to say that it has resulted in serious miscarriage of justice.

The view which has been taken by the learned Trial Court is a plausible one. Merely because there is possibility of any view upon re-appreciation of evidence, could not be made a basis to reverse the judgment of acquittal.

13. In the result, we do not find any good ground to interfere with the judgment of acquittal of respondent No.1. The Criminal Revision is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge