

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2682 of 2000**

- Dildar Hussain S/o Hyat Hussain @ Kodu, Musalman, Aged About 26 Years Caste Musalman, Occupation Agriculture, R/o Village Shardapur Bhadidand, PS Chalgali Distt. Surguja M.P. (Now Chhattisgarh)

---- Appellant**Versus**

- The State Of M.P. Through PS Chalgali Distt. Surguja M.P. (Now Chhattisgarh)

---- Respondent

For Appellant	:	Shri V.K. Sahu, Advocate.
For Respondent/State	:	Shri Anmol Sharma, P.L.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****08/08/2019**

This appeal arises out of the judgment of conviction and order of sentence dated 22.12.1999 passed by the II Additional Sessions Judge, Ambikapur, Surguja (M.P.), in S.T.No.393/98 convicting and sentencing the accused/appellant as under:

Conviction	Sentence
Under Section 450 of Indian Penal Code.	RI for five years.
Under Section 376(1) of Indian Penal Code.	RI for five years.
Under Section 323 of Indian Penal Code.	Fine of Rs.300/-, in default thereof to undergo additional RI for two months.

All the sentences were directed to run concurrently.

02. Brief facts of the case are that on 12.12.1998 at about 5 am the prosecutrix (PW-9) was in her home lying on the cot and her husband was not there as he had gone to some other place in connection with his livelihood. At that time, the accused/appellant entered her house and committed forcible sexual intercourse with her. On her raising cries, he gagged her mouth with a piece of cloth. After commission of rape while the appellant was running away from there and the prosecutrix raised alarm, the appellant assaulted her with a spade on her head. Hearing the cries, her neighbour Kasim (PW-10) reached there whom she narrated the entire incident and said Kasim also saw the appellant running away from the spot. Thereafter, report Ex.P/5 was lodged by the prosecutrix on 13.12.1998 at 3.40 pm against the appellant on which offence under Section 376 of IPC was registered.

During investigation, vide Ex.P/10 petticoat of the prosecutrix was seized and vide Ex.P/12 her vaginal slide was seized. As per Ex.P/13 MLC of the accused/appellant conducted by PW-6 Dr. Janeshwar Singh, he was found capable of performing sexual intercourse. However, the doctor did not notice any injury on his private part or semen stain or any other stain on his sexual organ or clothes. The prosecutrix was medically examined by PW-1 Dr. Smt. Subhadra Paikra who found one injury over head of the prosecutrix of size 2 cm x 2 cm. However, she did not notice any sign of recent sexual intercourse with the prosecutrix and after preparing two vaginal slides of the prosecutrix, handed over the same to the police constable. PW-1

opined that no definite opinion regarding intercourse could be given and for definite opinion, she advised for chemical examination of the vaginal slides. Her report is Ex.P/1. According to this doctor, vide Ex.P/2 the injury found on the head of the prosecutrix was 48 to 72 hours old from the time of examination. After investigation charge sheet was filed against the appellant under Sections 376, 450 and 323 of IPC followed by framing of the charges accordingly by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement 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 implication. In defence, he examined two witnesses namely Rafiq (DW-1) and Munaf Khan (DW-2).

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- That evidence of the prosecutrix is not supported by any eyewitness or medical evidence.
- That the FIR was lodged with a delay of one day and no satisfactory explanation has been offered therefor.
- That the injury found on the head of the prosecutrix was suffered

by her 48 to 72 hours prior to her medical examination as per evidence of PW-1 Dr. Smt. Subhadra Paikra vide Ex.P/2.

- That as per evidence of the prosecution witnesses as well as the defence witnesses, there was old dispute between the appellant and the prosecutrix in connection with some land for which village panchayat was convened as many as three times for resolving the said dispute. However, this fact has been denied by the prosecutrix.
- That as per FSL report (unexhibited) available in the record of the trial Court, no semen or spermatozoa was found on the underwear and vaginal slides of the prosecutrix or the underwear of the appellant.
- That as per medical evidence of PW-1 Dr. Smt. Subhadra Paikra, there was no sign of recent sexual intercourse with the prosecutrix and no definite opinion regarding rape could be given vide Ex.P/1.
- That considering the evidence of the prosecutrix which does not find corroboration from any other evidence, her conduct appears to be highly unnatural and her evidence is not worth reliance. As such, the possibility of false implication of the appellant cannot be ruled out.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that true it is that there was land dispute between the appellant and the prosecutrix but merely on that count, the prosecutrix, a married lady having four children, would not put at stake

her honour by falsely implicating the appellant. Further, though medical evidence does not lend corroboration to the prosecutrix version, but considering her statement as a whole, it stands proved that the appellant committed rape with her. As such, the trial Court has not committed any illegality or infirmity in convicting and sentencing the appellant by the impugned judgment.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Dr. Smt. Subhadra Paikra medically examined the prosecutrix on 14.12.1998 vide Ex.P/1 and noticed one injury over her head in the size of 2 cm x 2 cm. However, she did not notice any sign of recent sexual intercourse with the prosecutrix and after preparing two vaginal slides of the prosecutrix, handed over the same to the police constable. According to her, no definite opinion regarding intercourse could be given and for definite opinion, she advised for chemical examination of the vaginal slides. She also examined the head injury of the prosecutrix vide Ex.P/2 and opined that the said injury was 48 to 72 hours old from the time of examination.

09. PW-2 Narendra Kumar Kushwaha, Patwari, prepared the spot map Ex.P/4. PW-3 Kumar Sai Thakur, Head Constable, recorded the FIR (Ex.P/5) at the instance of the prosecutrix, obtained her consent for medical examination vide Ex.P/6, wrote a letter to Sub Divisional Magistrate in this regard vide Ex.P/7 and thereafter, sent the prosecutrix to Govt. Hospital, Pratappur for medical examination vide Ex.P/8 & P/9. He also seized the petticoat of the prosecutrix vide

Ex.P/10 and sent it for examination to Govt. Hospital, Pratappur vide Ex.P/11. He also seized the vaginal slides of the prosecutrix vide Ex.P/12.

10. PW-4 Mohd. Kalam states that on the date of incident at about 6-7 am son of the prosecutrix namely Sakir informed him that the appellant committed marpeet with his mother/prosecutrix. When he (PW-4) went to the house of the prosecutrix, she informed him about rape being committed with her by the appellant and also about the assault made by him on her head with spade. At that time, her husband was not present in the house. Thereafter, he along with the prosecutrix went to the police station for lodging report which was lodged by the prosecutrix. In cross-examination he admits that there was land dispute between the prosecutrix and the appellant which was resolved by Shardapur Committee.

11. PW-5 Ajmerun Bibi @ Sumiran states that on the date of incident she was at her home, the prosecutrix came to her home and informed her about the said incident of rape and assault by the appellant, on which she (PW-5) called Kalam (PW-4), to whom also the prosecutrix narrated the entire incident. She also admits that there was old land dispute between the appellant and the prosecutrix which was decided by the people of Shardapur.

12. PW-6 Dr. Janeshwar Singh medically examined the appellant vide Ex.P/13 and found that he was found capable of performing sexual intercourse. However, the doctor did not notice any injury on his private part or semen stain or any other stain on his sexual organ or

clothes. PW-8 R.C. Nishad is the investigating officer who has supported the prosecution case.

13. PW-9 prosecutrix has stated that on the date of incident she was at her house feeding her child keeping the door of the house open and at that time the appellant entered her house and committed rape with her despite her resistance. After commission of rape while the appellant was running away, she raised hue and cry, on which the appellant assaulted on her head with an axe. At that time, her husband was not present in the house. Thereafter, she went to the house of Kalam and his wife and informed them about the incident and thereafter fell unconscious. She admits lodging of FIR (Ex.P/5), her medical examination and seizure of her petticoat. She states that she was being threatened by the appellant and his brother Salamat and Rafiq that if she made statement against the appellant in the Court, she would be killed and that is why she is residing in the house of her father after leaving her village.

In cross-examination she states that she did inform the police that on the date of incident while she was breastfeeding her child keeping the door of the house open, the appellant entered her house and if the same is not recorded by the police, she cannot tell the reason. Likewise, she states that she did inform the police that after informing about the incident to Ajmerun she had fallen unconscious and if the same is not recorded in her police statement, she cannot tell the reason. She states that when the appellant was committing rape with her on cot, her child was also there on cot awake. She states that

other children had gone to Madarsa and were not in the house. However, subsequently she states that apart from the suckling child, two other children were also present in the house at the time of incident. She has denied the suggestion that there is any land dispute between the appellant and herself and panchayat meeting was convened at Village – Shardapur in this connection. She has also denied the suggestion that when the appellant was constructing a drain, she had objected to the same.

The trial Court after observing her demeanour recorded in the deposition that despite being asked by the Court, neither the prosecutrix is standing properly nor is replying to the questions properly and that she is making certain statement without being asked.

She has also denied the suggestion that while she was snatching away axe from the appellant, she suffered injury accidentally. She states that on her raising cry, Kasim came to her house, to whom she narrated the entire incident.

14. PW-10 Kasim Hussain is a witness to seizure of petticoat of the prosecutrix vide Ex.P/10 and seizure of one spade from the appellant vide Ex.P/18. He states that the prosecutrix had informed him about assault being made by the appellant with *Kodi* on account of there being dispute between them in relation to construction of drain. He admits that houses of the appellant, prosecutrix and himself are adjoining. He also admits that there was an old land dispute between the appellant and the prosecutrix, for which panchayat meeting was convened 2-3 times. He also admits that after the prosecutrix suffered

spade injury, she told that this time she would frame the appellant in such a case that he would languish in jail forever. He states that after about four to six days of quarrel due to construction of drain, he heard of lodging a report by the prosecutrix against the appellant.

15. DW-1 Rafiq, neighbour of the prosecutrix, states that on the date of incident the prosecutrix went to the house of her brother-in-law (*Devar*) Kalam (PW-4) and informed Kalam and his wife Ajmerun Bibi (PW-5) about being assaulted by the appellant, on which they said that the appellant be called and implicated in a case.

16. DW-2 Munaf Khan is a labour engaged by the appellant for construction of drain. He states that while he was constructing drain, the prosecutrix reached there hurling abuses and objected to construction of drain. She was trying to snatch away spade from the appellant and in this process, she suffered injury over her head and after that she went towards *Basti* hurling abuses. In cross-examination he states that he reached the house of the appellant at 7-7.30 am for doing labour work and is not aware whether any incident had taken place prior to that time.

17. As per evidence of PW-4 Mohd. Kalam, his wife PW-5 Ajmerun Bibi and PW-10 Kasim Hussain, it stands proved that there was old land dispute between the appellant and the prosecutrix, for which 2-3 times panchayat meeting was convened at Village-Shardapur and decision was taken by Shardapur Committee. However, the said fact has been denied by the prosecutrix in her deposition before the Court. This apart, PW-10 Kasim Hussain also states that he was informed by

the prosecutrix about being assaulted by the appellant with *Kodi* on account of there being dispute between them in relation to construction of drain by the appellant and that the prosecutrix had told that this time she would frame the appellant in such a case that he would languish in jail forever. He states that after about 4-6 days of the said incident of assault, he came to know about lodging of report by the prosecutrix against the appellant. However, the prosecutrix has also denied the factum of any such dispute with the appellant regarding construction of drain. The prosecutrix has mentioned name of PW-10 Kasim in the FIR but nowhere he supports said version of the prosecutrix in the Court.

According to DW-1 Rafiq, neighbour of the prosecutrix, Kalam and his wife Ajmerun Bibi (PW-5) were informed by the prosecutrix only about assault being made by the appellant on her, on which they said that the appellant be called and implicated in a case. Likewise, DW-2 Munaf Khan, who is a labour engaged by the appellant for construction of drain, states that while he was constructing drain, the prosecutrix reached there hurling abuses and objected to construction of drain and while she was trying to snatch away spade from the appellant, she sustained injury over her head accidentally.

18. Thus, in view of the aforesaid unrebutted evidence of the prosecution witnesses and the defence witnesses, it stands proved beyond reasonable doubt that there was an old land dispute between the prosecutrix and the appellant and that on the date of incident also there was quarrel between the two over construction of drain by the appellant during which the prosecutrix suffered injury on her head. It has also come in the evidence of PW-10 Kasim Hussain that after the

prosecutrix suffered head injury, she decided to implicate the appellant in a heinous offence to ruin his entire life. DW-1 Rafiq has also stated about false implication of the appellant after the said incident of assault.

19. PW-1 Dr. Smt. Subhadra Paikra who medically examined the prosecutrix on 14.12.1998 vide Ex.P/1 though noticed one injury over her head, but according to her the said injury was 48 to 72 hours old from the time of examination. Apart from that she did not notice any sign of recent sexual intercourse with the prosecutrix and after preparing two vaginal slides of the prosecutrix, handed over the same to the police constable. According to her, no definite opinion regarding intercourse could be given and for definite opinion, she advised for chemical examination of the vaginal slides. As per FSL report (unexhibited) available in the record of the trial Court, no semen or spermatozoa was found on the underwear and vaginal slides of the prosecutrix or the underwear of the appellant.

20. True it is that ordinarily the evidence of the prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if her evidence is reliable, no corroboration is necessary. While rape causes the greatest distress and humiliation to the victim, a false allegation of rape causes equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. Indisputably, in a case of rape, the evidence of the prosecutrix must be given predominant consideration, but to hold that

this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.

21. Thus, keeping in mind the aforesaid principles of law, considering the given facts and circumstances of the case, the nature and quality of evidence, oral and medical; the conduct of the prosecutrix as observed and recorded by the trial Court in her deposition; her denial to the proved facts of there being old land dispute between her and the appellant and further denial of quarrel between the two over construction of drain by the appellant in which she suffered head injury accidentally; omission and contradiction in her diary statements, version in the FIR and the deposition in the Court, the evidence of the prosecutrix does not inspire confidence of the Court and the possibility of false implication of the accused/appellant in this offence cannot be ruled out. The prosecution has failed to prove its case against the appellant beyond the shadow of all reasonable doubt and being so, the benefit of doubt has to go to the appellant.

22. In the result, the appeal is allowed. The impugned judgment is set aside and the appellant is acquitted of the charges under Sections 450, 376(1) & 323 of IPC by giving him benefit of doubt. He is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of CrPC.

Sd/

(Gautam Chourdiya)
Judge