

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 24-6-2019****Pronounced on 27-6-2019****CRA No. 2670 of 2000**

Arat Sai @ Ronha S/o. Son Sai Cherwa, aged 20 years, R/o. Village Sonpur, PS Baikunthpur, Distt. Korea MP (now CG) ---- **Appellant**

Versus

The State of M.P. (now CG) through PS Baikunthpur, Distt. Korea (CG)

---- Respondent

For Appellant	:	Mr. A.K. Yadav along with Mr. Vikas Pandey, Adv.
For State	:	Mr. Ashutosh Pandey, 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 09/12/1999 passed by the Additional Sessions Judge Baikunthpur, District Korea (M.P.) (Now in Chhattisgarh) in S.T. No. 315/1998 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 (1) IPC	5 Years	Rs. 200/-	1 month RI

2. In brief, the prosecution story is that on 13/11/1996 prosecutrix was 20 years of age. She was resident of village Sonpur. On 11/11/1996 at about 12 p.m. she was returning back from Government Hospital, Mansukh to her house by walking. From village Sonpur appellant followed her and at lonely place caught hold her hand, took her in a pit by pulling and committed sexual intercourse with her. She went in the house of Bahal at village Sonpur and narrated the incident to his wife. She came back in her house and narrated the incident to her family members. Her husband was not present in the house. On 12/11/1996 her husband returned back then she also narrated him the incident. On 13/11/1996 she went to P.S. Baikunthpur along with her husband and lodged an FIR Ex. P-2. After completion of the investigation, a charge sheet was filed against him for the offence

punishable under Section 376 of IPC. The trial Court framed the charge against him under Section 376 (1) of the IPC. He abjured the charge and faced the trial. To bring home the charge against him, the prosecution examined 10 witnesses in all. He examined 3 witnesses in 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. No rape has been committed by him with the prosecutrix. Trial Court has not properly appreciated the evidence available on record in proper perspective. She was a consenting party. Therefore, the impugned judgment of conviction and order of sentence may be set aside and he may be acquitted of the aforesaid charge.

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-8-A, P.W. 9 Dr. Smt. Rajni Sharma had examined prosecutrix and found following injuries on her body :-

- i. An abrasion over left elbow,
- ii. An abrasion over right side of thigh.

7. As per the alleged MLC report Ex. P-8A no injury mark was present over vulva, vagina of prosecutrix, aforesaid injuries were simple in nature and caused by rub against hard and rough surface, no definite opinion could have been given regarding forcible intercourse.

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

9. As per the alleged seizure Ex. P-4, P.W. 10 D.K. Sharma, ASI had seized one petticoat from the possession of the prosecutrix.

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 seizure Ex. P-1, P.W. 10 D.K. Sharma, ASI had seized one sealed packet containing two slides of prosecutrix from constable Devi Prasad.

12. 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.

13. As per the RFSL report Ex. P-14 on article A petticoat and on article B-1 and B-2 slides of the prosecutrix, semen and sperm were found.

14. There is no such evidence on record on strength of which it can be said that Ex. P-14 is not believable. Thus, this Court believes on Ex. P-14.

15. P.W. 2 Prosecutrix says in para No. 1 of her statement given on oath that she was returning back from village Mansukh after injecting the injection, on the way appellant took her in a pit and committed forcible sexual intercourse with her.

16. P.W. 4 Jagsiya Bai who is mother in law of prosecutrix says in para No. 2 and 3 of her statement given on oath that prosecutrix had gone to village Mansukh for her treatment. After returning back she had told her that on the way appellant took her in a pit and committed forcible sexual intercourse with her.

17. P.W.5 Surendra Mani who is husband of the prosecutrix says in para No. 2 of his statement given on oath that prosecutrix had told him that she had gone to village Mansukh for her treatment, during returning back appellant committed wrong act with her.

18. P.W. 7 Shivbachan says in para No. 2 of his statement given on oath that prosecutrix had told him that appellant had taken her by pulling.

19. D.W. 1 Sonsai who is father of the appellant, says in para No. 2, 3 and 4 of his statement given on oath that one Devsai Uraon had inimical relation with Surendra Mani and others, he helped Devsai thus Surendra Mani and others have falsely implicated his son. Four days prior to alleged incident appellant had gone to village Viraulidand and returned back after 3 months.

20. D.W. 2 Devsai Uraon says in para No. 2, 3 and 4 of his statement given on oath that Surendra Mani and others used to quarrel with him

regarding property dispute, Sonsai Uraon helped him thus, Surendra Mani and others have falsely implicated the appellant.

21. D.W. 3 Bhawan Sai says in para No. 1, 2 and 3 of his statement given on oath that appellant had come to his village Viraulidand to cultivate the land of his mother, he resided there continuously for 3 months, he did not go to any other place.

22. 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.”

23. 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.”

24. 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.

25. 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 unreproachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony.”

26. Though prosecutrix had not stated as per the prosecution case that she had raised alarm, but looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Munna** (supra) this Court finds that it cannot be said that prosecutrix was allegedly a 'free consenting party'.

27. Though as per the Ex. P-8-A, no injury was found over the private part of prosecutrix and P.W. 9 Dr. Smt. Rajni Sharma opined that no definite opinion can be given regarding forcible sexual intercourse, 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. As per the alleged FIR Ex. P-2 prosecutrix was returning back from village Mansukh after her treatment, on the way appellant took her by pulling in a pit and committed forcible sexual intercourse with her.

29. In the case in hand the alleged date of incident is 11-11-1996 and Ex. P-2 has been lodged on 13-11-1996.

30. 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] .”

31. 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.”

32. In the case in hand in Ex. P-2 it has been mentioned that husband of the prosecutrix was not present in the house, he returned back one day prior to lodging of the Ex. P-2. P.W. 2 prosecutrix says in para 1 of her statement that her husband had not returned back from Budhar, he returned back next day of the incident. P.W. 5 Surendra Mani says in para 2 and 3 that he had gone to Budhar, after returning back, he brought prosecutrix to police station. There is no such evidence on record on strength of which it can be said that said explanation is not simple, not natural and not normal. Moreover in the

Indian society it is very natural circumstance 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-2 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-2 is not fatal to the prosecution case.

33. There is no such evidence on record on strength of which it can be said that Ex. P-2 is fabricated or concocted to falsely implicate the appellant in alleged offence.

34. 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”.

35. 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”.

36. 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 help of appellant and his father to rival of prosecutrix family i.e. D.W. 2 Devsai Uraon, prosecutrix family would stake their reputation and honour and falsely implicate the appellant, through prosecutrix.

37. 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 Viraulidand.

38. No such omissions and contradictions have been dealt during the cross examination of P.W.2 prosecutrix, P.W. 4 Jagsiya Bai, P.W. 5 Surendra Mani, P.W. 7 Shivbachan which may adversely affect the aforesaid testimony of aforesaid witnesses. There is no such evidence on record on strength of which it can be said that P.W. 7 Shivbachan had made aforesaid statement only because he was interested with prosecutrix party due to any reason or he was prejudiced with appellant due to such reason.

39. Looking to the above mentioned facts and circumstances of the case, this Court disbelieves aforesaid statements of D.W. 1 Sonsai, D.W. 2 Devsai Uraon, D.W. 3 Bhawansai that appellant has been allegedly falsely implicated in this case because there was animosity between D.W. 2 Devsai Uraon and Surendra Mani and others and appellant and his father were interested with D.W. 2 Devsai Uraon, and at the time of alleged incident appellant was present in village Viraulidand.

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

41. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 2 prosecutrix, P.W. 4 Jagsiya Bai, P.W. 5 Surendra Mani, P.W. 7 Shivbachan are not simple, not natural and not normal.

42. 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 P.W. 2 prosecutrix.

43. In the case in hand, aforesaid statement of prosecutrix gets corroboration from P.W. 4 Jagsiya Bai, P.W. 5 Surendra Mani, P.W. 7 Shivbachan, Ex. P-1, Ex. P-2, Ex. P-4, Ex. P-8-A, Ex. P-14.

44. After the appreciation of the evidence discussed herebefore this court believes on aforesaid statements of P.W. 2 Prosecutrix, PW. 4 Jagsiya Bai, P.W. 5 Surendra Mani and P.W. 7 Shivbachan.

45. After appreciation of the evidence discussed herebefore this Court finds that the prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 376(1), IPC

against the appellant. There appears no reason to interfere in the quantum of sentence awarded by the trial Court. Thus aforesaid conviction and sentence are affirmed.

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

47. 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