

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1201 of 2014**

Kallu Ram Cherwa, S/o Late Ghuldo Ram Cherwa, Aged About 40 Years
R/o Vill- Ghutrapara, Thana And Tahsil, Ambikapur, Distt- Surguja C.G.

---- Appellant

Versus

State Of Chhattisgarh, Through District Magistrate Surguja, P.S. Ambikapur,
Distt Surguja Chhattisgarh

....Respondent

For Appellant	:	Mr. Sanjeev Kumar Sahu, Advocate
For State	:	Mr. Neeraj Mehta, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board by Manindra Mohan Shrivastava, J.

12.03.2019

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 24.09.2014 passed by learned Additional Session Judge (F.T.C.) Surguja, Ambikapur (CG) in Sessions Trial No.165/2002, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 376 (2)(G) of Indian Penal Code.	Imprisonment for life and fine of Rs.1000/-, in default of which, additional R.I. for one year.

2. The prosecution story, as is unfolded from the impugned judgment and records of the case, is that the prosecutrix lodged FIR in Ex.P/1 on 26.08.2001 at 9:55 hours against the present appellant and two other accused, wherein, she alleged that while she was going to her house, on way, she was caught hold of, overpowered, assaulted and raped. She was taken for medical examination after

registration of offence. Investigation was carried out and charge-sheet was filed against the appellant and other co-accused, on the allegation that the appellant and other co-accused subjected the prosecutrix to rape. The allegation being involvement of more than one accused including the present appellant, the appellant and other accused were charged of having committed offence of gang rape punishable under Section 376(2)(G) of IPC and also under Section 506 IPC. The appellant having abjured guilt, was put to trial.

3. At this stage, it is relevant to state that one of the accused Mukesh remained absconded and the third accused Babu being juvenile, was tried separately. In the present case, the appellant was tried and convicted by learned trial Court mainly relying upon the evidence of the prosecutrix and medical evidence.

4. Assailing legality and correctness of impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the prosecutrix has narrated the story of rape which is highly improbable and is also a case of false implication and concoction. He would argue that the prosecutrix, in the FIR, did not involve more than 3 persons, in the Court statement, she has gone to the extent of involving another 3 or 4 persons which renders her statement unreliable and untrustworthy. The next submission is that the prosecutrix version that while she was going on way, she was caught hold of by number of persons and committed rape, is highly improbable because it was not enclosed place like room or any distant forest but within the area and around the village. It is highly improbable that she would have cried for help and nobody would have come to her rescue throughout the time when she was subjected to rape by so many persons. It is also argued that even though, the allegation is of commission of offence of gang rape, the medical evidence does not support because no injury have been found on her private parts. According to learned counsel for the appellant, the prosecution story becomes doubtful because according to the prosecutrix, the incident of rape was committed sometimes late in the evening around 9:00 p.m. but the FIR was lodged next day after almost 12 hours which is not supported with any satisfactory explanation either from her evidence or from the evidence of any other prosecution witness.

5. On the other hand, learned State counsel supports the judgment of conviction and order of sentence and submits that right from lodging of FIR, the

involvement of the appellant in the alleged commission of offence has been clearly stated by the prosecutrix and according to the prosecutrix, the appellant was present, who had taken lead in the matter because it was he, who caught hold of her hands, threatened her, assaulted her and first raped her. Learned State counsel would further argue that the prosecutrix has very emphatically stated in her evidence regarding she being manhandled and assaulted, which is proved from medical evidence of she having sustained injury on the back of the body. He would further argue that according to the prosecutrix, she was threatened and assaulted, therefore, she had become helpless and unable to offer much resistance though, she tried to escape once. In this state of affairs and situation, it is not always necessary that injury would be found on the private parts because she was overcome by violence and she was made to surrender. He would further argue that as far as delay in lodging FIR is concerned, not only the prosecutrix but also the Kotwar of the village Raghunath (PW3) has also supported the version of the prosecutrix which sufficiently explains how why the FIR could be lodged only next day. Learned State counsel lastly submits that the broken pieces of bangles were also seized from the spot.

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

7. The FIR was lodged by the prosecutrix on 26.08.2001 at 9:55 hours. The contents of the FIR shows that the incident of rape with the prosecutrix is said to have happened sometimes late in the evening of the previous day. In the FIR, itself, it has been recorded that in the night, after the incident, she went to the house of Kotwar and stayed there overnight and thereafter, others were also informed and report was lodged. Lodging of this FIR by the prosecutrix has been proved not only by the prosecutrix but also by Investigating Officer, Mr. H.N. Singh (PW5), who has stated in his evidence that FIR was taken in Ex. P/1. The prosecutrix in her evidence has stated that the incident happened in the evening when she was returning to her house after completing her job at about 6:30 p.m. She has deposed that on way, she met with Babu, Kallu and another boy, whose name does not know. They offered to give her lift which she denied. Her further deposition is that when she reached forest area after crossing Ghutrapara, her house situated across the forest, Kallu caught her hand and expressed sexual desire. According to her, along with Kallu, there were Mukesh, Babu and 3-4 persons. Thereafter, she deposes that her mouth was gagged by Kallu and he picked up a big stone to assault her. She was crying and at that time, 3 or 4 boys

also came in. She was thrown on the ground, limbs were disabled, clothes were torn and then she was subjected to rape by Kallu, Mukesh and one more boy. She was threatened that if she discloses, she would be killed. She further deposes that she was assaulted on her back by Kallu and other boys and she was also assaulted on the face near jaws. Frightened with the incident, she went to the house of Kotwar and informed him. As it was late in the night, Kotwar did not take her to police station that night and next day, she went to the police station and lodged report in Ex.P/1. Raghunath (PW3), Kotwar, supports the prosecution evidence of the prosecutrix with regard to the circumstances, in which, the prosecutrix lodged report next morning at about 9:55 hours by stating that about 11:00 p.m. in the night, the prosecutrix came to his house and informed that on way, she was subjected to rape by Kallu, Mukesh and Babu. He further deposes that in the night, she stayed back in his house and next day, he did not know where she went, probably she went to police station and while the prosecutrix stayed in his house in the night, Babu's parents had come to convince that Babu was not involved. In the cross-examination, he states that in the night, the prosecutrix did not give any information, she stayed back and went in morning. The evidence of this witness on the aspect of full disclosure of the incident appears to be doubtful but it is certain that the prosecutrix had stayed in his house overnight. What prosecutrix has stated in her evidence is that she was frightened on account of incident and due to which, she preferred to go to the house of the Kotwar and next morning went to the police station. This much of explanation, in our opinion, satisfactorily explains the circumstances, in which, the report came to be lodged at 9:55 hours in the morning.

8. We cannot ignore that the prosecutrix had suffered gang rape leaving her in state of fear and shock, therefore, only because immediately, in the night, itself, she did not prefer to go to police station but stayed overnight in the house of Kotwar, false implication cannot be inferred.

9. The prosecutrix's evidence of she being subjected to rape by the appellant and other accused, is supported from the medical evidence also because Dr. S.L. Kujur (PW4) has clearly stated in his evidence that there was swelling on her right part of the chin and there were scratches also and she was found complaining of pain in the right side of her back.

10. True, it is that she was found habitual to sexual intercourse and no injury was found on her private part, presence of injury on her body clearly proves that

she was subjected to violent attack. The evidence of the prosecutrix would show that she was overpowered by presence of number of persons and not only she was threatened but she was assaulted also. In this situation, it is only probable that the prosecutrix was completely disabled and what followed with her by the appellant and other accused, unable to offer much resistance which explains why no injury were found on the private part of the prosecutrix.

11. There is no suggestion even given to the prosecutrix why she would falsely implicate the appellant in the alleged commission of offence. It is not even a case where the appellant has come out with the defence or emerging from the evidence of the prosecution that it could possibly be a case of consent between the parties. In cases of gang rape, the story of consent is wholly improbable.

12. In the result, the appeal is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge