

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.930 of 2013**

1. Imran Khan S/o Shabber Khan Aged About 27 Years R/o Santoshi Nagar, Chaurasia Colony, Ps Tikrapara, Rev. And Civil Distt. Raipur C.G. , Chhattisgarh
2. Mohammad Haneef Khan S/o Mohammad Sultan Aged About 21 Years R/o Santoshi Nagar, Chaurasia Colony, Ps Tikrapara, Rev. And Civil Distt. Raipur C.G. , District : Raipur, Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through Ps Tikrapara Raipur C.G. , Chhattisgarh

---- Respondent**CRA No.1207 of 2013**

- Vikky Khan Kalam S/o Kalam Khan Aged About 22 Years R/o Santoshi Nagar, Chourasia Colony, Raipur, Ps Tikrapara, Raipur, C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through Sho, P.S. Tikrapara, Raipur, C.G., Chhattisgarh

---- Respondent

For Appellants	:	Shri KK Dixit, Advocate
For Respondent/State	:	Shri Santosh Bharat, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****11-03-2019**

1. These two appeals are directed against the impugned judgment of conviction and order of sentence dated 21-08-2013 passed by the Special Judge, (Scheduled Caste/Scheduled Tribe), Prevention of Atrocities Act, 1989, Raipur in Special Sessions Trial No.15/2013, whereby and whereunder, each of the appellants have been held guilty for commission of offence under Section

376(2)(g) and 506-B of IPC and sentenced, as described below-

Section-376(2) R.I. for twenty years and fine of Rs.100/-, in
(g) IPC default of payment of fine, additional R.I. for
three months.

Section 506-B R.I. for two years
of IPC

Both sentences were ordered to run concurrently.

2. The prosecution story, as unfolded from the impugned judgment and records of the case is that the prosecutrix, PW-4 (name is not being disclosed) lodged a report in the police station-Tikarapara on 14-12-2012 at 11.50 hours, whereunder, she alleged that in the night of 13-12-2012, while she was sleeping in the house, at about 00.30 hours in the night, the appellants came to the house and knocked the door. The prosecutrix, in the belief that Tajim Beg had come, opened the door, then she found the three appellants present, who forcibly pushed her inside the house, she was gagged and threatened and thereafter, subjected to gang rape. On these allegations, the police conducted investigation, which eventually led to filing of charge sheet against three appellants. The appellants were charged for commission of offence under Section-376(2)(g) & 506-B of IPC and 3(2)(v) of the (Scheduled Caste/Scheduled Tribe), Prevention of Atrocities Act, 1989 and Section 3(1)(xii) of the (Scheduled Caste/Scheduled Tribe), Prevention of Atrocities Act, 1989. In support of the case of the prosecution, the prosecution examined the prosecutrix as the main witness. In order to impeach the credibility of the prosecution case, the appellants came out with the defence that they have been falsely implicated, because the house, in which, the prosecutrix was living, is owned by Tajim Beg, husband of Summi Begum, PW-1 and there was an old enmity existing between the appellants and Tajim Beg and it was at the instance

of Tajim, the appellants were falsely implicated. A defence witness was also examined who stated that on the date of incident, this defence witness had seen two persons coming to the house of the prosecutrix and when there was some hue and cry in the vicinity, the appellants were falsely implicated. The learned trial Court, however, found the evidence of the prosecutrix reliable, despite there being evidence of the doctor that no definite opinion regarding rape could be given, convicted and sentenced the appellants, as stated hereinabove, giving rise to this appeal.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the prosecution case is liable to be disbelieved, because the appellants have come out with clear defence of existence of enmity between the appellants and Tajim Beg, in whose house, the prosecutrix was residing as tenant. It is next submitted that the evidence of the prosecutrix of she having been subjected to rape, is highly doubtful, firstly because she did not raise hue and cry nor did she cry for help. Secondly, she did not offer any resistance, because no injury was found on her body, including the private parts. Thirdly, there is plausible defence raised that in the night of the incident, two persons were found going towards the house of the prosecutrix and there is evidence led by the prosecution itself that the residents of vicinity were raising objections with regard to residence of the prosecutrix in the area, therefore, the evidence of the prosecutrix is liable to be disbelieved and the appellants are entitled to be granted benefit of doubt.

4. On the other hand, learned State counsel would support the impugned judgment of conviction and order of sentence by submitting that the prosecutrix has clearly stated that the appellants came to her house in the night and she was threatened, her mouth was gagged and thereafter, she was subjected to gang rape. He would submit that the incident happened at about 00.30 hours in

the night and on the next morning at 11.50 hours, a report was promptly lodged in the police station. The story of enmity between Tajim Beg, husband of Sammi Begum, PW-1 on the one hand and the appellants on the other and Tajim and his wife Shammi, PW-1 pressurizing the prosecutrix to lodge false report has not been suggested to the prosecutrix and thus defence is not consistent and otherwise not reliable. The law does not require that allegation of commission of offence of rape must necessarily be supported by medical evidence.

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

6. According to the FIR lodged at 11.50 hours on 14-12-2012, the prosecutrix states regarding commission of offence of rape on her sometime in the midnight. The evidence on record reveals that the prosecutrix was residing in one room on rent basis. The report has been lodged the next morning at 11.50 hours. The prosecutrix has stated in her evidence that in the incident left her in a shock and despair and she was quite frightened also. In the case of commission of offence of gang rape, the conduct of the prosecutrix of she being shocked and frightened, cannot be ruled out. We, therefore, find that it is not a case, where the prosecution case should be doubted on the ground of any unexplained delay in lodging the FIR.

7. The prosecutrix, PW-4, in her evidence, has clearly stated that at about 00.30 hours in the night, when she was sleeping in the room, a call was given in her name, she was under an impression that her brother has come, door was opened and then she found that three appellants were standing there, who gagged her mouth, she was dragged inside the house, due to which, she could not cry for help. All the appellants on the point of knife, threatened the prosecutrix to kill and thereafter, she was subjected to gang rape by the appellants one after the other. She has stated that because she was frightened, she could not immediately come out and in the morning, when Sammi, PW-1

came to her, she informed Sammi regarding commission of rape. After that, Sammi gave tea to the prosecutrix and report was lodged in the police station. This statement of the prosecutrix was subjected to detailed cross-examination, in which, she has stated that because of she being threatened, she could not cry for help. It has also been elicited that after the incident, she neither cried for help nor informed anybody. The prosecutrix has stated that as she was threatened and shocked, she could not immediately call any body. There is an admission on the part of the prosecutrix that prior to the incident of rape, there was incident of quarrel between the appellants and Sammi, PW-1. It has also been admitted that on the date of incident, husband of Sammi, PW-1, namely Tajim Beg was not at home. It has also been elicited in her cross-examination that some residents had raised an objection that some people used to meet the prosecutrix and she herself has stated that her father and brother used to come to meet her. She has also admitted that Sammi and her husband were being asked by the neighbours to evict the prosecutrix. The suggestion that Tajim and his wife Sammi had tutored the prosecutrix to lodge a report, has been denied. The suggestion that upon hue and cry raised by the neighbours, she falsely implicated the appellants, has also been denied.

If we look into the evidence of the prosecutrix and what was elicited in her cross-examination, the evidence of the prosecutrix is self-explanatory as to why she could not raise alarm. Her evidence is that in the night, the appellants had come, they were three in number and allegation is that her mouth was gagged and on the point of knife, she was threatened to kill, if she dares to resist rape. Certainly in this situation, in the midnight, the conduct of the prosecutrix does not raise any doubt with regard to her allegation of she having been subjected to gang rape. It is not very difficult to understand the situation of trauma, shock and frightening, the prosecutrix may have faced, when she was attacked by the

three persons in the midnight and there are nobody in the room to save her. Therefore, the submission that the statement of the prosecutrix should be disbelieved on the ground that she did not raise any hue and cry, would be wholly unacceptable.

It has also been elicited that immediately after the incident, the prosecutrix did not inform anyone about the incident, but in the morning, when Sammi came to her, she disclosed about the incident and a report was lodged. The reason, as to why, the prosecutrix could not inform about the incident to any body immediately is that she was shocked, shattered and frightened. It is not a case that there was long delay in lodging the FIR. In the morning, Sammi came to her and upon incident being disclosed, a report was lodged in the police station. This has also been stated by Sammi, PW-1.

8. The appellants have examined Raju Malik, DW-1 in their defence. Firstly, the defence taken by the appellants are that there existed enmity between the appellants on one side and Tajim, landlord of the prosecutrix on the other. However, no such suggestion has been given to the prosecutrix that on account of enmity, Tajim used the prosecutrix to the extent that she went to the police station to lodge a false report against the appellants. We did not find from the evidence that the nature and extent and gravity of dispute between the appellants and Tajim was of such a grave nature that Tajim would go to such an extent. Secondly, there is no suggestion given to the prosecutrix. Thirdly, it is difficult to accept such kind of defence that only to help her landlord, the prosecutrix would falsely implicate not one but three persons of commission of rape.

9. The statement of the defence witness is that two persons were seen going towards the house of the prosecutrix in the night. It appears that an attempt has been made to impeach credibility of the prosecutrix by suggesting

that the prosecutrix was a lady of easy virtue and accessible to many and therefore, these three appellants have been falsely implicated. There is nothing in the evidence to show as to why the prosecutrix chose only these three appellants to implicate in the offence of gang rape.

10. One of the submissions of learned counsel for the appellants that the medical evidence does not support the case of the prosecution, therefore, that by itself, is strong ground to disbelieve the evidence of the prosecutrix. This argument does not impress us, in view of the settled legal position that if the evidence of the prosecutrix is otherwise reliable, there is no need for the Court to look for the corroboration from the medical evidence. The defence has not come out with any evidence to show that the prosecutrix was consensual to sexual intercourse.

11. We did not find anything in the circumstances of the case to draw an inference that the present was a case of consensual sexual intercourse. The most important factor of this case that this is a case of commission of gang rape and it is not a case that the prosecutrix had an affair with the persons and there is allegation of rape only against one person.

12. Therefore, in view of above situation, we did not find any ground to interfere with the impugned judgment of conviction and order of sentence. In the result, the appeal fails and is accordingly dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge