

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 27.06.2019

Judgment Delivered on : 22/08/2019

CR.A. No. 486 of 2014

1. Ganesh Sahu, S/o. Pardeshi Sahu, Aged About 39 Years,
 2. Ganpat Sahu, S/o. Pardeshi Sahu, Aged About 55 Years
- Both are R/o. Village -Majgaon, P.S. Kawardha, Distt. Kabirdham
C.G. Civil and Rev. Distt. Kabirdham, Chhattisgarh.

---- Appellants

Versus

State Of Chhattisgarh, Through : P.S.- Kawardha, District Kabirdham,
Chhattisgarh.

-----Respondent

For Appellants	: Mr. Ajit Singh, Advocate
For Respondent/State	: Mr. Arun Shukla, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

22/08/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Special Sessions Judge, Kabirdham (Kawardha) (C.G.) in Special Sessions Trial No.22/2013 on 30.04.2014, convicting the appellants for the offence under Section 376 (g) of the Indian Penal Code and sentencing them to undergo R.I. 10 years and for the offence under Section 3 (1) (12) of Scheduled Castes &

Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentencing them to undergo R.I. for 2 years with default stipulations.

2. Facts of the case in brief is this that on 02.05.2013, when the prosecutrix (P.W.-1) was alone in her house along with her children, then at about 8 PM in the night, the appellants came to her door asking for her husband. The prosecutrix replied that her husband is not at home, thereafter, the appellants and one another forcefully entered in her house and took her to the bedroom and then the appellant No.1 had forceful sexual intercourse without her consent and willingness. During the incident, the appellant No.2 and one other were holding the hands of the prosecutrix in assistance to the act done by the main accused. The prosecutrix immediately informed about this incident to her husband on mobile phone and also when he came back to his house. The prosecutrix is a member of scheduled caste. FIR (Ex.P-3) was lodged in the police station and on that basis, the case has been investigated and on completion of investigation, charge-sheet was filed.
3. The trial Court charged the appellants with offence under Section 450 and 376 (g) of the Indian Penal Code, Section 3 (1) (12) and Section 3 (2) (5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The appellants denied the charges and prayed for trial. The prosecution examined as many as 13 witnesses on its behalf. On examining the appellants under

Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. In defence, the appellant No.2 has examined himself before the Court and two other witnesses were also examined in support of the defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid.

4. It is submitted by the learned counsel appearing on behalf of the appellants, that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The prosecution has failed to prove the case against the appellants beyond all reasonable doubts. The prosecutrix (P.W.-1) is an unreliable witness, she had reason to falsely implicate the appellants. The husband of the prosecutrix -Dharmendra Ratre (P.W.-2) was the then Sarpanch of respective Gram Panchayat and a No Confidence motion had been moved against him, regarding which, voting meeting was scheduled on 04.05.2013. The husband of the prosecutrix had threatened the appellants to withdraw No Confidence motion and when they did not agree and they did not succumbed to his threat, they have been falsely implicated in this case so that these appellants and one another may not be able to participate in the voting scheduled on 04.05.2013. Prosecutrix (P.W.-1) and her husband (P.W.-2) are interested witnesses and in the background of the incident, it can

not be expected that they will make true statement. None of the other witnesses have supported the prosecution case. The medical examination report of the prosecutrix very clearly mentions that no sign of injuries were found on the body and private parts of the prosecutrix and no definite opinion was given by the Dr. Usha Suryawanshi (P.W.-8) in her report Ex.P-30.

5. It is further submitted that the story of the prosecution is highly improbable, which had been proved by the appellants in defence evidence. Ganpat Sahu (D.W.-1) has proved the documents that a notice of No Confidence motion was given to SDO, Kawardha on 12.04.2013 vide Ex.D-4 and notice was served upon the husband of the prosecutrix similarly vide Ex.D-5. He has further stated very clearly that between 29.04.2013 to 03.05.2013, the appellant No.1 was not present in the place and his presence was in Damoh (M.P.). Similarly Bharat Lal Ramteke (D.W.-2), who is a Gram Kotwar of Village – Damoh, District – Balaghat has made statement in favour of the appellant No.1. Therefore, on this basis it had been successfully proved by the appellants that the prosecution case is false.
6. Counsel for the appellants places reliance in the judgment of Supreme Court in ***State of Karnataka Vs. F. Natraj***, in ***Cr.A. No.1439 of 2011*** decided on ***07.10.2015***, in which it is held that where the testimony of the prosecutrix is full of discrepancies and does not inspire confidence and further the medical report is not conclusive, the accused becomes entitled for benefit of doubt. On

similar principle reliance has been placed on the judgment of Single Bench of Madhya Pradesh High Court in ***Raj Kumar & Another Vs. State of M.P., (2000) Cri.L.J. 1896***. It is prayed that the appellants were entitled for acquittal. Hence, they may be acquitted of all the charges. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellants in that case, at least sentence imposed upon the appellants, which appears to be too harsh, may be reduced relying on the judgment of Orissa High Court in ***Ahiraj Saha & Anr. Vs. The State, (2003) Cr.L.J. 3114***.

7. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. It is submitted that the trial Court has elaborately considered upon the grounds of defence raised by the appellants/accused persons and have rejected it. Therefore, there is no reason to interfere in the finding of the Court below. It may be so that the appellants and the husband of the prosecutrix had political rivalry, but there is evidence present of the prosecution beyond reasonable doubt against the appellants that they have committed the offence as alleged. It is also submitted that the grounds of alibi has to be proved beyond reasonable doubt, which has not been proved in that manner, therefore, the appellants are neither entitled for acquittal nor for reduction of sentence. Hence, the appeal be dismissed.

8. I have heard the learned counsel for the parties and perused the record of the Court below.
9. The point in issue in this appeal is whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
10. There is no dispute that the prosecutrix is a member of scheduled caste. The prosecutrix (P.W.-1) has stated that on 02.05.2013 at about 8 PM, she was in her house alone with her girl child, when both the appellants and one unknown person came to her door and asked for her husband, when she replied that her husband is not at home, she was caught hold by appellant No.2 and one another and was pinned down on the ground, thereafter, the appellant No.1 committed rape with her. She has stated that immediately thereafter, she informed her husband on mobile phone and when her husband came back, she went to the police station at Kawardha and lodged the FIR (Ex.P-3). In cross-examination, she has admitted that she did not suffer any injuries in the incident. In paragraph 16 of her deposition, she has denied about knowledge of meeting for No Confidence motion that was to be held on 04.05.2013. She has further denied that the appellants and other had given intimation of No Confidence motion to SDO because of which, she has lodged false FIR. She has also denied that as her husband had threatened the appellants to withdraw the no confidence motion to which they did not agree, therefore, she has lodged false FIR, so that the

appellants and other could not be able to participate in the voting for No Confidence motion on 04.05.2013. No material discrepancies has been established in the cross-examination in comparison to previous statement given by her in Ex.D-1 and D-2. She has denied all the suggestions that appellant Ganesh was not present at the time of incident. She has admitted that she had insisted with the police to arrest the appellants and one another on the same day. She also admitted that in case all the accused persons would have been arrested, they would not have been able to present themselves in the No Confidence motion voting. The admissions made by her may have some implication which shall be considered after appreciating all the evidence. Therefore, it is found that the prosecutrix (P.W.-1) has remained consistent in her statement given by her in examination-in-chief.

11. Dharmendra Ratre (P.W.-2) has stated that on 02.05.2013 at about 8.00 PM, he was standing in front of betel shop, when he received phone call from his wife, he went to his house along with his friend Kailash and Ashok Vema. When he arrived at home, he was informed about the incident by his wife prosecutrix (P.W.-1). In cross-examination he has denied the suggestions that he had threatened the Panchas of the Panchayat that he will implicate them in false case in case they vote against him. He has admitted that he had notice of no confidence motion. He has denied about having knowledge that out of 11 panchas, 9 were against him in that motion. He has denied that it was the

appellant No.2, who had initiated the no confidence motion. He has further denied the suggestion that he had falsely implicated the appellants by making use of his wife only to protect himself from ousting from the post of Sarpanch. Some discrepancy has been established in the statement before the Court and his previous statement (Ex.D-3) made before the police, which can not be said to be material in any sense. He has further denied all the adverse suggestion given to him and remained consistent on his statement that he was informed about the incident by his wife.

12. Kailash Pandey (P.W.-9) has stated that on the date of incident, at about 8.30 in the night, he was present with Dharmendra Ratre (P.W.-2), in a betel shop. He has stated that at that time, Dharmendra Ratre (P.W.-2) has received phone call from his wife and informed that some incident has happened. Then this witness went along with Dharmendra Ratre (P.W.-2) to see his wife at Village - Saigona, where Dharmendra Ratre (P.W.-2) after talking to his wife, informed him that three persons had committed the house trespass and raped his wife. Thereafter, he went in company of Dharmendra Ratre (P.W.-2) and prosecutrix (P.W.-1) for lodging of FIR. In cross-examination, he had remained firm on his statement, which has not been rebutted.
13. Remaining witnesses examined by the prosecution are regarding the investigative procedures. Dr. Usha Suryavanshi (P.W.-8) examined the prosecutrix (P.W.-1) on 03.05.2013 and reported that she did not find any injury on the body and the private parts

of the prosecutrix or any symptom regarding sexual intercourse, she could not give any opinion vide her report Ex.P-30.

14. Ganpat Sahu (D.W.-1) has stated that Dharmendra Ratre (P.W.-2) was Sarpanch of Gram Panchayat Majgaon and he himself and other family members of the family were panchas. He stated that on 12 April, 2013, a No Confidence motion was initiated and notice was given to SDO, Kawardha. The Motion had signature of 9 panchas. Thereafter, the meeting was scheduled on 04.05.2013, in which the No Confidence motion was passed. He has stated that on account of this no confidence motion, which was to be held on 4th of May, 2013, the prosecutrix and her husband Dharmendra Ratre (P.W.-2) have collaborated and conspired to falsely implicate the appellants so that no confidence motion should fail. He has made statement of alibi that on 02.05.2013 at about 8.00 PM, he was present in village-Majgaon, where a bore well was being dug and in cross-examination, he has denied all the suggestion given by the prosecutor on the basis of the statement given by the prosecutrix. There is no denial that No Confidence motion had been initiated before the date of incident and the meeting was due on 04.05.2013. Whether this circumstances alone can be held as sufficient reason to hold that the prosecutrix may be making a false statement needs consideration.
15. Bharat Ramtake (D.W.-2) has stated that he is a Kotwar of village – Damoh, District – Balaghat (M.P.). He has stated that he was

acquainted with appellant No.1, who had been to village- Damoh on 29.04.2013 and stayed in the house of Sarju Singh from 29.04.2013 to 03.05.2013, regarding which he had made an entry in Musafiri Panji, which is produced as Ex.D-12. In cross-examination, he has admitted that the Musafiri Panji is not certified and not maintained properly. He has further denied the suggestion given by the prosecutor that he is making a false statement.

16. Bharat Lal Ramtake (D.W.-2) firstly has made only statement that he is working as Kotwar of village- Damoh in District – Balaghat. No identity papers were produced by him. Neither his identity has been verified. Secondly the Musafiri Panji register is not certified as is required under police regulations that Kotwar shall present register to the police for timely verification. Apart from that a Kotwar is not a public servant, therefore, any register maintained by him does not have any presumptive value, hence for this reason, it can not be said that the statement made by Bharatlal Ramtake (D.W.-2) is proved beyond reasonable doubt to exempt the appellant No.1 from his involvement in the commission of offence as alleged.
17. It is vehemently argued by the counsel for the appellants, that it is established, that there is strong reason to disbelieve the statement of the prosecutrix. The case is based only on the basis of the statement of prosecutrix, which is not a reliable evidence for the reason that the husband of the prosecutrix Dharmendra

Ratre (P.W.-2) Sarpanch was facing No Confidence motion, which was scheduled for voting on May, 2013, therefore, the prosecutrix had interest in the failure of the said no confidence motion. Secondly, there is no physical evidence present regarding the commission of offence of forceful rape, therefore, her statement should be disbelieved. Reliance of the appellant on the judgment of Supreme Court in case of State of Karnataka Vs. F. Nataraj (supra) and the judgment of the Madhya Pradesh High Court in case of Raj Kumar & anr. Vs. State of M.P.(supra) has no relevance for the reason that the statement of the prosecutrix has remained intact in her cross-examination. However, it is a special case in which there is evidence present against the appellants regarding commission of offence and also the evidence is present in favour of defence, which make out strong circumstances because of which the prosecutrix may make a false statement to implicate the appellants in this case. The Supreme Court in the case of **Vijayee Singh & Ors. Vs. State of U.P.**, reported in **(1990) 3 SCC 190** in paragraph 15 has held as under :-

“15.....Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt.”

18. In paragraph 17 of the same judgment the Hon'ble Supreme Court has observed as under :-

“17..... In Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat, AIR 1964 SC 1563 it is observed: -

It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in [Section 299](#) of the Penal Code. The general burden never shifts and it always rests on the prosecution. But, under [Section 105](#) of the Evidence Act the burden of proving the existence of circumstances bringing the case within the exception lies on the accused; and the Court shall presume the absence of such circumstances. Under [Section 105](#) of the Evidence Act, read with the definition of "shall presume" in [Section 4](#) thereof, the Court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed Or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the Court sufficient to make it consider the existence of the said circumstances so-probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the Court such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence,

satisfied the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under [Section 105](#) of the Evidence Act, but it may raise a reasonable doubt in the mind of a Judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the Judge whether the accused had the requisite intention laid down in [Section 299](#) of the Penal Code....."

".....The practical result of the three propositions stated above is that an accused's plea or an exception may reach one of three not sharply demarcated stages, one succeeding the other, depending upon the effect of the whole evidence in the case judged by the standard of a prudent man weighing or balancing probabilities carefully. These stages are; firstly, a lifting of the initial obligatory presumption given at the end of Sec. 105 of the Act; secondly the creation of a reasonable doubt about the existence of an ingredient of the offence; and thirdly, a complete proof of the exception by "a preponderance of probability", which covers even a slight tilt of the balance of probability in favour of the accused's plea. The accused is not entitled to an acquittal if his plea does not get beyond the first stage. At the second stage, he becomes entitled to acquittal by obtaining a bare benefit of doubt. At the third stage, he is undoubtedly entitled to an acquittal. This, in my opinion, is the effect of the majority view in Parbhoo's case which directly relates to first two stages only. The Supreme Court decisions have considered the last two stages so far, but the first stage has not yet

been dealt with directly or separately there in any case brought to our notice....."

19. In the judgment of ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat***, reported in ***AIR 1983 SC 753***, at para-7 of the judgment, the Hon'ble Supreme Court has held as under :-

"7. It is now time to tackle the pivotal issue as regards the need for insisting on corroboration to the testimony of the prosecutrix in sex-offences. This Court, in [Rameshwar v. The State of Rajasthan](#),⁽¹⁾ has declared that corroboration is not the sine qua non for a conviction in a rape case. The utterance of the Court in Rameshwar may be replayed, across the time-gap of three decades which have whistled past, in the inimitable voice of Vivian Bose, J. who spoke for the Court. The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge

The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

20. Similarly in the judgment of ***Dola & Ors. Vs. The State of Odisha***, reported in ***AIR 2018 SC 4020***, the Hon'ble Supreme Court has held at paragraph 5, 7 & 8, which reads as under :-

“5. It is well settled law that if the version of the prosecutrix is believed, basic truth in her evidence is ascertainable and if it is found to be credible and consistent, the same would form the basis of conviction. Corroboration is not a sine qua non for a conviction in a rape case. The evidence of a victim of sexual assault stands at par with the evidence of an injured witness and is entitled to great weight, absence of corroboration notwithstanding. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration, except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. When a grown up and married woman gives evidence on oath in Court that she was raped, it is not the proper judicial approach to disbelieve her outright.

7. In *Sadashiv Ramrao Hadbe Vs. State of Maharashtra*, [(2006) 10 SCC 92], this Court reiterated that the sole testimony of the prosecutrix could be relied upon if it inspires the confidence of the Court:

“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the

solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

8. However, as is also evident from the observations above, such reliance may be placed only if the testimony of the prosecutrix appears to be worthy of credence. In this regard, it is also relevant to note the following observations of this Court in the case of [Raju v. State of Madhya Pradesh](#), [(2008) 15 SCC 133], which read thus:

.....11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.....”.

21. Further it was held in paragraph -21 of the same judgment, which is as under :-

“21. In the matter on hand, on going through the entire material on record, we are of the clear opinion that the prosecutrix apparently had motive to seek revenge against the accused persons.....”

22. The Hon'ble Supreme Court in case of **Rajoo & Ors. Vs. State of M.P.**, reported in **AIR 2009 SC 858**, made similar observation in paragraph 9, 15 & 16, which reads as under :-

“9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication.....”

15. On an examination of the entire evidence, we are of the opinion that it would be difficult to conclusively show the involvement of each of the accused beyond reasonable doubt. To our mind the truth and falsehood are so inextricably intertwined, that it is impossible to discern where one ends and the other begins.

16. As already noted above Raju, son of M. Billya did not file an appeal in this court. In the light of the fact that we have found the prosecution story to be doubtful, Raju too must be given the benefit of doubt in the light of the judgments in Raja Ram & Ors. Vs. State of M.P. (1994) 2 SCC 568, [Arokia Thomas vs. State of T.N.](#) (2006) 10 SCC 542 and Suresh Chaudhary etc. vs. State of Bihar (2003) 4 SCC 128. We, accordingly allow the appeals and acquit the present appellants, as also Raju son of M. Billya.”

23. Further in the case of ***Rajinder Vs. State of H.P.***, reported in ***AIR 2009 SC 3022***, the Hon'ble Supreme Court has observed in paragraph 14, which is as under :-

“14. In Sadashiv Ramrao Hadbe, this Court while reiterating that in a rape case, the accused could be convicted on the sole testimony of prosecutrix if it is capable of inspiring the confidence in the mind of the Court, put a word of caution that the Court should be extremely careful while accepting the testimony when the entire case is improbable and unlikely to have happened. This is what has been stated:

"9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The

courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

24. Thus it would seem that the principle in believing the un rebutted statements of the prosecutrix is not a cardinal principle and there are expectations, when her statements can be disbelieved. Firstly, there has to be a ground in defence to show that the prosecutrix has a motive and an interest in the prosecution and conviction of the person concerned. In presence of such substance, the rule of prudence would be applicable and if that theory has some support from the evidence present in the prosecution case as well as in the defence case, that can be taken into consideration before drawing conclusion of guilt of the accused person. Particularly, in this case, there are admissions in the cross-examination made by the prosecutrix herself that her husband was the Sarpanch of the Gram Panchayat, whereas, the appellants were Upsarpanch and members of Panchayat. Although she has denied regarding knowledge of No Confidence motion against her husband, but she has admitted that her husband was removed from the post of Sarpanch after the No Confidence motion. She has further admitted that her husband needed three votes for his success in No Confidence motion. She has further admitted the suggestions of the defence that she had herself requested the police to arrest the three members of Panchayat immediately on the same day. Although she denied

that she made such a request so that it would lead the No Confidence motion to a failure. No Confidence motion against Dharmendra Ratre (P.W.-2), which was to be voted open on 04.05.2013, is admitted by him in his evidence and it is supported by the evidence of Ganpat Sahu (D.W.-1) and Babulal Dhruve (D.W.-2), therefore, there are reasons to believe that the prosecutrix (P.W.-1) was interested to save the position of her husband as Sarpanch of Gram Panchayat. Some of her admissions and particularly, the request made by her to the police officer for arresting the appellants on the same day further clarifies her interest on the same. The post of Dharmendra Ratre (P.W.-2) could not be saved, because the voting on No Confidence motion took place on 04.05.2013 and Dharmendra Ratre (P.W.-2) was removed from the post of Sarpanch, even then it can not be said that the matter ended, therefore the reason that the grievance had continued because the appellants had casted vote against Dharmendra Ratre (P.W.-2) for his removal from the post of Sarpanch. Hence, these are the peculiar circumstances in this case on the basis of which it can be said that the doubt theory raised by the appellants side has substance, which can not be ignored in any manner. Therefore, on one hand, there is statement of the prosecutrix implicating the appellants in this case and on the other hand it is shown that the prosecutrix (P.W.-1) had an interest to prosecute and persecute the appellants in this case, so that the No Confidence motion

against her husband fails. Hence, it is such a case where two views are possible in that case, the principle is very clear that the view which is in favour of the accused persons has to be followed.

25. Hence, after a close scrutiny of the evidence brought from both the sides and all the material present in the record I am of this view that the prosecution has failed to prove its case against the appellants beyond all reasonable doubts. Hence, on the basis of these findings, the appeal is allowed. The appellants are acquitted of the charges under Section 376 (g) of the Indian Penal Code and for the offence under Section 3 (1) (12) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellants are reported to be in jail. They be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge