

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1291 of 2002

Reserved on : 29/01/2020

Delivered on : 19 /05/2020

- Tulasi Ram, S/o Shyamlal Sinha, aged 24 years, R/o Village Karwari, P.S. Dongargarh, District- Rajnandgaon, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh, through Police Station Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Respondent

For Appellant	:	Shri B.P. Singh, Advocate.
For State/Respondent	:	Shri Ajay Kumrani, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. By the impugned judgment dated 23/11/2002 passed in S.T. No. 150/2001 by the Sessions Judge, Rajnandgaon, Chhattisgarh, Appellant has been convicted under Sections 450 and Section 376(2) (g) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and rigorous imprisonment for 10 years respectively with default stipulations. All jail sentences to be run concurrently.
2. In the present case, prosecutrix is a married lady aged about 30 years

having two children. According to the case of the prosecution, on the date of incident i.e. 18/07/2001 at around 9:30 PM, prosecutrix was sleeping in her house with her two children aged about five years and eight years and her husband Prem Lal (PW-5) had gone out towards *Basti* to purchase *Bidi*, at that time appellant Tulasi Ram and other co-accused persons namely Manik and Vinod (both acquitted) forcibly broke the door of her house and entered in the house due to which prosecutrix woke up and asked why they had entered in her house. Meanwhile, her son namely Tetaku aged about 8 years also woke up and shouted *Babu-Babu*. On this, co-accused Manik and Vinod ran away from the spot. Then accused/appellant Tulasi Ram started committing rape with her. When appellant tried to kiss her lips then prosecutrix bit the lips of the appellant. Thereafter, appellant ran away from the spot. Prosecutrix started shouting and went to the house of one Ramhu (PW-12) and narrated the whole story to him. Husband of the prosecutrix and other villagers also gathered at the spot and thereafter caught the appellant and committed mar-pit with him. At around 2:30 AM, prosecutrix lodged the F.I.R. i.e. (Ex. P-1) against the appellant and other co-accused persons Manik and Vinod. Prosecutrix was medically examined by Dr. Surendra Bagga (PW-4) vide (Ex. P-9). Statement of the prosecutrix and other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. After completion of the investigation, charge-sheet was filed against accused/appellant and other co-accused person namely Manik and Vinod. Trial Court framed charges against appellant and co-accused persons.

3. In support of its case, the prosecution examined as many as 12

witnesses. In examination under Section 313 of the Code of Criminal Procedure, the appellant and other co-accused persons denied the guilt and pleaded innocence. No witness has been examined in defence for the appellant but co-accused persons examined three witnesses in defence namely Bisoha Ram Sahu, Head Constable (DW-1), Gopal Dakaha (DW-2) and Santosh (DW-3) in their support.

4. After trial, the trial Court acquitted the co-accused persons namely Manik and Vinod but convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
5. Learned Counsel appearing on behalf of the appellant submitted that without there being any clinching evidence on record against the appellant, the trial Court has wrongly convicted him. He further submits that statement of the prosecutrix is not reliable. There are material contradictions and omissions occurred in the statements of prosecutrix and other witnesses. From the evidence available on record, it is well established that there was previous enmity between husband of the prosecutrix and the appellant. Thus, a false and concocted report has been lodged by the prosecutrix. The entire story narrated by the prosecutrix is also suspicious. He further submits that trial Court has also not found the statement of the prosecutrix trustworthy. Therefore, trial Court acquitted the co-accused persons on the same fact of evidence. With regard to the appellant also, statement of the prosecutrix is not trustworthy. Thus, trial Court has wrongly convicted the appellant.
6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.

7. I have heard learned Counsel appearing for the parties and perused the record with due care.
8. I have gone through the entire statement of prosecutrix and other prosecution witnesses. Prosecutrix (PW-1) in her Court statement has deposed that at the time of incident appellant Tulasi Ram and other co-accused persons namely Manik and Vinod, all three of them entered inside her house. Then, co-accused Vinod hold the hands of prosecutrix and Manik hold her head, thereafter, appellant committed rape with her. She further deposed that at that time, her elder son namely Tetaku woke up and started crying. Thereafter, co-accused Manik and Vinod ran away from the spot but appellant was continuously committing rape with her. But in the diary statement of the prosecutrix, the above fact is not mentioned. Prosecutrix in her diary statement has stated that appellant and co-accused Manik and Vinod came to her house. Then her elder son Tetaku woke up. Thereafter, co-accused Manik and Vinod ran away from the spot. Then appellant alone committed rape with her. Thus, there are material contradictions available in the statement of the prosecutrix.
9. According to the statement of the prosecutrix (PW-1), after the incident, she went to one Ramhu (PW-12) to whom she has narrated that appellant Tulasi Ram has committed rape with her. Due to fear, prosecutrix has not stated anything about co-accused Manik and Vinod. According to the statement of Ramhu (PW-12), prosecutrix has only stated about appellant Tulasi Ram that he has committed rape with her. Just after the said incident, prosecutrix (PW-1) has not stated anything to Ramhu (PW-12) about co-accused persons due to fear,

this fact seems to be suspicious. From the admission made by the prosecutrix (PW-1) and other witnesses, it is well established that prior to the incident, prosecutrix was married to one Keshari, who was the Uncle of co-accused Vinod, meaning thereby, acquitted co-accused Vinod was the nephew of prosecutrix. After the death of Keshari, prosecutrix was having illicit relationship with one Dashrath. Thereafter, prosecutrix left Dashrath and married to Prem Lal. From the evidence available on record, it is also established that after the marriage of the prosecutrix with Prem Lal, a Panchayat election was conducted and Prem Lal and co-accused Vinod contested the election. In the said election, appellant was canvassing for co-accused Vinod and as a result of election, Prem Lal was defeated in the election. After the election, enmity begun between the parties of Prem Lal and co-accused Vinod. Prosecutrix has also admitted the fact that appellant and co-accused Vinod had never visited her house before the said incident.

10. On minute examination of the above evidence available on record, it is well established that present husband of prosecutrix i.e. Prem Lal is the third husband of prosecutrix. Prosecutrix was also having illicit relationship with one Dashrath. Co-accused Vinod (acquitted) was the nephew of the prosecutrix in relation. Looking to the character of the prosecutrix and the relationship between her and co-accused Vinod, it seems that that the story narrated by her is not natural and reliable. Also, in the election contested between Prem Lal and co-accused Vinod, appellant was in the support of Vinod. Thus, after the election, enmity developed between husband of the prosecutrix and appellant. Looking to the above, the fact that appellant and co-accused persons

had visited the house of the prosecutrix, seems to be suspicious. On the date of incident, prosecutrix who is a married lady, was sleeping in her house and appellant forcibly entered inside her house and committed rape with her, this story seems to be suspicious and not reliable. Also, there are material contradictions occurred in the statements of the prosecutrix. Trial Court has also not relied upon the statement of the prosecutrix and therefore, acquitted the co-accused Manik and Vinod. Looking to the above facts, the allegations made against the appellant also seems to be suspicious and not reliable and therefore, accused/appellant is also entitled to get the benefit of doubt.

11. Consequently, appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charges framed against him under Sections 450 and Section 376(2)(g) of the Indian Penal Code. The appellant is reported to be on bail. His bail bond shall continue for a further period of six months from today in light of Section 437-A of Cr.P.C
12. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

**Sd/-
(Arvind Singh Chandel)
Judge**