

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 19/06/2020****Judgment delivered on : 30/06/2020****CRA No. 885 of 2003**

- Sukhdhar, S/o Shobha Singh, Caste – Muriya, age 25 years, Occupation – Labour, R/o Village – Parakot, P.S. Parpa, Distt. Bastar (CG)

---- Appellant**Versus**

- State Of Chhattisgarh through P.S. Frazerpur, Distt. Bastar (CG)

---- Respondent

For Appellant : Shri R.N. Jha, Advocate.

For Respondent/State : Shri Ayaz Naved, Govt. Adv.

Hon'ble Shri Gautam Chourdiya, J**C A V Judgment**

The matter is heard through video conferencing.

02. This appeal arises out of the judgment of conviction and order of sentence dated 04th August, 2003 passed by the First Additional Sessions Judge, Bastar at Jagdalpur (CG) in S.T.No.467/2002 convicting the accused/appellant under Sections 456 and 376 of IPC and sentencing him to undergo RI for three years, to pay a fine of Rs.200/- and to undergo RI for five years, to pay a fine of Rs.1,000/- with default stipulations respectively. Both the sentences were directed

to run concurrently.

03. Brief facts of the case are that on the date of incident i.e. 13th May, 2002 the prosecutrix, aged about 21 years, was alone at her home, her husband had gone out to the house of one Sonu to attend some party at 9 pm. At around 11 pm the accused/appellant knocked at the door of the prosecutrix and when she asked as to who is there, the appellant pushed open the door as a result of which latch of the door got broken. Thereafter, the appellant threatened her of life by showing a knife if she raised alarm and having gagged her mouth, threw her on the floor, upturned her petticoat and forcibly committed sexual intercourse with her. After commission of said act, while the appellant was fleeing from the place of occurrence, her husband reached there and chased him but could not catch him. During the said incident, the prosecutrix also sustained some injuries. Thereafter, on the next day panchayat meeting was convened and then FIR (Ex.P/3) was lodged by the prosecutrix on 15.5.2002.

04. During investigation, one petticoat and clothe of the prosecutrix, broken latch and broken pieces of her bangles from the place of occurrence were seized vide Ex.P/4. Spot map Ex.P/5 was prepared. One knife was also seized from the accused/appellant vide Ex.P/6. The prosecutrix was medically examined by PW-7 Dr. Smt. Shraddha Das vide Ex.P/10 wherein she noticed following injuries on the person of the prosecutrix:

(i) incised wound 2 cm away from right lower eyelid, wound is 1 cm in length and 2 mm in depth, 2 mm in width,

- (ii) a small round shaped abrasion on right elbow joint on medial side,
- (iii) a contusion on right upper limb just above right elbow joint, round in shape, 2 inches in diameter,
- (iv) a linear abrasion 2.5 cm below left little finger 2.5 cm in length,
- (v) 5-6 linear abrasion on left thigh on medial side, 7 cm in length, they are 1 mm away from each other. These abrasions are in middle at hip joint and left knee joint.
- (vi) a round in shape contusion on right lower limb just above right knee joint, 2 inches in diameter.

Private part examination

Hymen absent, old healed scar seen at 6 o'clock position. No injury on vulva vagina. Vagina admits two fingers. Two vaginal slides were prepared for chemical examination.

According to the doctor, all the injuries were simple in nature, caused by hard and blunt object within four days from the date of examination. In her opinion, there were signs of rape with the prosecutrix.

05. The appellant was also medically examined on 26.9.2002 by PW-5 Dr. Mahendra Mahilange vide Ex.P/8 wherein he found that there was no external injury on the body of the appellant and he was capable of performing sexual intercourse. During investigation, statements of PW-1 prosecutrix, PW-2 Nirgat, PW-3 Sonu and other witnesses Budhru, Kamlu and Lachchhin were recorded. After completion of investigation, charge sheet under Sections 456, 376, 506B & 324 of

IPC was filed against the accused/appellant.

06. The trial Court framed charges under Sections 456, 376 and 506B of IPC against the accused/appellant which were denied by him and he prayed for trial. So as to hold the accused/appellant guilty, the prosecution examined as many as 07 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No witness in defence was examined by the appellant.

07. The trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment convicted and sentenced the appellant as mentioned above.

08. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case without there being any cogent and reliable evidence. The statements of the prosecution witnesses including the statement of the prosecutrix, suffer from contradictions and omissions and as such are not reliable. The entire evidence if taken together suggest that the prosecutrix was a consenting party. Hence the trial Court has wrongly convicted and sentenced the appellant which is liable to be set aside. Reliance has been placed on the decision in the matter of ***Mohan Lal Vs. State of Rajasthan, (2002) 10 SCC 14.***

09. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in

the same warranting interference by this Court.

10. Heard learned counsel for the parties and perused the material available on record.

11. PW-1 prosecutrix, a married lady aged about 21 years, has stated in her deposition that on the date of incident when she was alone at her home at 8 pm, her husband had gone to the house of Sonu, somebody knocked at her door on which she thought that it may be her husband. When she was trying to open the door, the appellant having pushed the door entered her home as a result of which latch of the door got broken. Thereafter, the appellant threw her on the floor, upturned her petticoat, pointed the knife on her thigh, gagged her mouth and after removing his towel inserted his male organ into her vagina and ejaculated his semen there. At that time her husband came to home and saw the appellant lying on the prosecutrix, on which the appellant ran away from there who was chased by her husband but the appellant could not be caught. Thereafter, she informed about the entire incident to her husband and then both of them went to the house of Sonu and informed him also about the incident. Her husband searched for the appellant with Sonu but he was not found. Next day of the incident, the appellant, his brother, father and other villagers came to the home of the prosecutrix and requested for compromise in the matter by taking Rs.50,000/- which was refused by them and thereafter, FIR (Ex.P/3) was lodged by her at the police station. However, the said fact is not there in the FIR.

The prosecutrix states that during the incident she suffered cut

injury on her thigh from the knife of the appellant. In para 15 she admits that after the incident her husband did not allow her to move out of the home for one week and that thereafter she went to her parental house. She admits in para 16 that her husband had confined her in the home for one week and after consultation with the family members, she lodged report against the appellant. In para 19 she states that when the appellant knocked at the door, she opened the same and then he entered her home. She states that the appellant had sexual intercourse with her for about half an hour. She further admits that due to fear of her husband she told him about the said act of the appellant. In para 22 she admits that while she was staying at her parental house, her husband took her back to his home on the assurance that he would not beat her and keep her well.

12. PW-2 Nirghat, husband of the prosecutrix, also stated that on the date of incident when he returned from the house of Sonu at about 12 in the night, he saw the door of his home open and that the appellant was having sexual intercourse with his wife/prosecutrix. The appellant was totally naked. When he was searching for a club, the appellant ran away from there. Though he chased the appellant but could not catch him. Thereafter, he went to the house of Sonu, informed him about the incident and then both of them searched for the appellant but could not get him and then returned to the house of Sonu. He states that the prosecutrix informed him about the entire incident and at that time Sonu was also present there.

This witness also states that on the next day of incident a

panchayat meeting was convened which was attended by the appellant and his family members where the appellant's family members requested for compromise in lieu of Rs.50,000/- which was refused by them and thereafter, FIR was lodged at the police station. In para 12 he admits that when he saw the appellant and his wife in compromising position, both of them were totally naked, his wife was lying on the bed and the appellant had mounted on her. He admits that during the said intercourse, his wife/prosecutrix was not raising any hue and cry. He states that when he entered the room, he saw that the appellant had caught hold of both the hands of his wife and was doing intercourse with her. He states that since his wife had lost her honour, she remained in the home for a week and thereafter, her parents took her to their house.

13. PW-3 Sonu states that on the date of incident the appellant and his wife came to his house at 3 am and informed about the incident of rape by the appellant. On the next morning when he (Sonu) asked the appellant about the same, he denied and told that if no report is lodged, he would give Rs.500/-. When he (Sonu) informed about the same to the prosecutrix and PW-2, they did not agree for it and went to police station for lodging report against the appellant. He states that a panchayat meeting was convened which was attended by the appellant and his elder brother where there was quarrel between the parties. He admits that the fact regarding offer of Rs.500/- being given by the appellant was not disclosed to the police and he is disclosing this fact for the first time in the Court. In para 5 he admits that in the past he had quarrel with the appellant and his family members, which was

reported to the police and he was convicted by the Court in the said mater. In para 7 he admits that when PW-2 Nirghat went to the parental house of his wife/prosecutrix for taking her back to his home, there was quarrel between PW-2 and his younger mother-in-law Junabai which was reported to the police by Junabai, and PW-2 Nirghat was arrested by the police. In para 8 this witness admits that 4-5 villagers had only gathered, no panchayat was convened and that no family member of the appellant attended the said meeting.

14. Looking to the quality of evidence of the prosecutrix (PW-1), it would be hazardous to place reliance upon the same and therefore, for ascertaining the truth, evidence of PW-2 Nirghat, husband of the prosecutrix, and PW-3 Sonu, elder brother-in-law (Jeth) of the prosecutrix, needs to be examined carefully.

15. So far as injuries found on the person of the prosecutrix are concerned, as per MLC (Ex.P/10) which has been proved by PW-7 Dr. Smt. Shraddha Das, there were as many as six injuries on the body of the prosecutrix, which were simple in nature and caused by hard and blunt object. According to the doctor, the said injuries were caused four days prior to the medical examination which was conducted on 15.5.2002. Admittedly, the incident occurred on 13.5.2002. As such, the medical evidence creates doubt on the version of the prosecutrix that these injuries were caused by the appellant.

16. According to the prosecutrix, the appellant had sexual intercourse with her for about half an hour. Her husband (PW-2) states that when he entered the room, he saw the appellant on top of his wife

holding her both hands and doing intercourse with her and at that time both of them were totally naked and the prosecutrix was lying on the bed whereas according to the prosecutrix she was thrown on the floor by the appellant and subjected to rape. In para-19 the prosecutrix admits that due to fear of her husband, she told him about the said act of the appellant. PW-2 Nirghat also admits that when he reached the spot and saw both of them in compromising position, at that time his wife/prosecutrix was not raising any hue and cry, she was lying on the bed and both of them were fully naked. PW-2 Nirghat did not see any knife in the hand of the appellant, rather he saw that the appellant had caught hold of both the hands of the prosecutrix.

17. Though the prosecutrix has stated that the accused had gagged her mouth and committed forcible sexual intercourse with her on the point of knife, but no such statement or evidence was given by PW-2. Prosecutrix in para 19 herself admits that when the door was knocked by the appellant, she opened the same and then he entered her home and after upturning her petticoat and removing his towel, committed intercourse with her. She admits that the appellant entered her home at 11 pm, the said intercourse last for about half an hour and her husband PW-1 came there after about one hour. As per statement of PW-2 he entered his home at about 12 in the night. Thus, it appears that the appellant stayed with the prosecutrix at her home for about one hour and during this period, the clothes of the prosecutrix and the appellant were removed and she was subjected to sexual intercourse by the appellant on the bed.

18. It has come in the evidence of PW-2 Nirghat that for about a week after the incident the prosecutrix remained confined in her home and thereafter, she was taken to her parental house by her parents. However, from perusal of FIR (Ex.P/3) it is seen that the same was lodged on 15.5.2002 by the prosecutrix.

19. In para 16 PW-2 Nirghat states that he does not know whether his younger mother-in-law Jamunabai had lodged any report against him for quarrelling with her and committing marpeet with his wife/prosecutrix. PW-3 Sonu admits in para 7 that when PW-2 Nirghat went to the parental house of the prosecutrix for taking her back, PW-2 had quarrel with his younger mother-in-law which was reported to the police and PW-2 was arrested by the police.

20. In para 5 PW-2 Nirghat states that 4-5 days after lodging of FIR, police came to his home and told him that he (PW-2) should leave his wife/prosecutrix and he was taken to police station and arrested. He states that after bail he was released. Thus, from the above, it is proved that after the incident PW-2 had a quarrel with his wife/prosecutrix and younger mother-in-law and thereafter, report was lodged against him, on which he was arrested and thereafter released on bail. Thus, from the facts and circumstances of the case, it seems probable that PW-2 would have beaten the prosecutrix after the incident on account of which she would have been taken by her parents to her parental house.

21. In para 22 the prosecutrix (PW-1) admits that while she was

staying at her parental house, the appellant came there to take her back to his home on the assurance that he would not beat her and keep her well. In para 5 the prosecutrix states that next day of the incident village panchayat was convened which was attended by the appellant, his brother, father and other villagers where Rs.50,000/- was offered by them for compromise which was refused and thereafter FIR was lodged. However, this fact is not mentioned in the FIR or her diary statement recorded on 15.5.2002. Even her husband PW-2 Nirghat or PW-3 Sonu has not mentioned this fact anywhere. It appears to be a new story developed subsequently. According to PW-3 Sonu, no village panchayat was convened, only 4-5 villagers had gathered and no family member of the appellant was there in the said gathering. Therefore, the fact of offer of Rs.50,000/- made by the appellant's family members for compromise, is totally beyond the case of the prosecution and not supported by any evidence.

22. It is well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a

guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. {***State of Himachal Pradesh Vs. Asha Ram, AIR 2006 (SC) 381 : (2005) 13 SCC 766; Vishnu Vs. State of Maharashtra, AIR 2006 (SC) 508 : (2006) 1 SCC 283***}.

23. It is the trite law that it is not necessary for the defence to prove its case with the same rigour as the prosecution is required to prove its case, and it is sufficient if the defence succeeds in throwing a reasonable doubt on the prosecution case which is sufficient to enable the Court to reject the prosecution version. In a criminal trial, it is not at all obligatory on the accused to produce evidence in support of his defence and for the purpose of proving his version he can rely on the admissions made by the prosecution witnesses or the documents filed by the prosecution. In these circumstances, the Court has to probe and consider the materials relied upon by the defence instead of raising an adverse inference against the accused for not producing evidence in support of his defence, because the prosecution cannot derive any strength or support from the weakness of defence case. The prosecution, if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution would crumble down. {***Lakshmi Singh Vs. State of Bihar, AIR 1976 SC 2263; SL Goswami Vs. State of M.P., AIR 1972 SC 716; Rabindra Kumar Dey Vs. State of Orissa, AIR 1977 SC 170***}.

24. In the present case, there are material contradictions and omissions in the statements of the prosecutrix (PW-1), her husband

PW-2 Nirghat and her elder brother-in-law PW-3 Sonu as discussed above. Even medical evidence does not support the version of the prosecutrix. As per evidence of PW-2 Nirghat when he saw the appellant and the prosecutrix, both were fully naked and prosecutrix was lying on the bed and the appellant was on top of her and doing intercourse with her. She was not raising any hue and cry at that time. The prosecutrix admits that on being knocked by the appellant, she opened the door and then he entered the room and there was sexual intercourse between the two for half an hour. There is evidence to show that the appellant used to beat the prosecutrix due to which she was living at her parental house after the incident and thereafter, she was taken back by the appellant on the assurance of being not beaten and kept well. Though the prosecutrix has stated that next day of the incident village panchayat was convened which was attended by the appellant, his brother, father and other villagers where Rs.50,000/- was offered by them for compromise which was refused but this fact is not mentioned in the FIR or her diary statement recorded on 15.5.2002. Even her husband PW-2 Nirghat or PW-3 Sonu has not mentioned this fact anywhere. As per evidence of PW-3 Sonu, no village panchayat was convened, only 4-5 villagers had gathered and no family member of the appellant was there in the said gathering. No independent witnesses has been examined in this case by the prosecution. Neither the knife seized from the appellant nor the broken latch was exhibited and produced before the trial Court. Thus, considering the overall facts and circumstances of the case, the nature and quality of evidence of the prosecutrix and other witnesses, the admissions made by them of

certain suggestions given by the defence as discussed above, it appears to be a case of consent. The prosecution has failed to prove its case beyond all reasonable doubt against the appellant.

25. In the case in hand, from the evidence on record two views are possible, one pointing towards the guilt of the appellant and another towards his false implication. In the matter of ***State of Gujarat Vs. Jayrajbhai Punjabhai Varu, (2016) 14 SCC 151*** the Hon'ble Supreme Court held as under:

20. The burden of proof in criminal law is beyond all reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also the rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted."

26. On the basis of aforesaid discussion, this Court is of the opinion that the prosecution could not establish its case against the appellant beyond all reasonable doubt. It appears that the act of sexual intercourse between the appellant and the prosecutrix was consensual. Hence, the appellant is entitled for acquittal by giving him benefit of doubt.

27. In the result, the appeal is allowed. The impugned judgment of the trial Court is hereby set aside, acquitting the appellant of the charges under Sections 456 & 376 of IPC. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of CrPC.

Sd/

(Gautam Chourdiya)
Judge