

NAFR**HIGH COURT OF CHHATTISGARH, BIILASPUR**CRIMINAL APPEAL NO. 936 OF 2012Judgment Reserved on 08/01/2020Judgment delivered on 19/05/2020

Basawan S/o Jethuram Yadav, aged about 46 years R/o Valgan, Post Office Palari, Police Station Palari, District Raipur at present District Balodabazar-Bhatapara (C.G.)

....Appellant

Versus

State of Chhattisgarh through the Incharge, P.O. Plari Arakshi Kendra Palari, District Raipur at present District Balodabazar-Bhatapara (C.G.)

...Respondent

For Appellant: Mr. Goutam Khetrapal, Advocate

For Respondent: Ms. Seema Dixit, PL

Hon'ble Shri Justice Arvind Singh Chandel

CAV JUDGMENT

1. This appeal has been preferred against the judgment dated 09/10/2012 passed in Sessions Trial No. 169/2011 by the First Additional Sessions Judge, Balodabazar (C.G.), whereby the Appellant has been convicted under Sections 506 Part-II and 376 of the Indian Penal Code and sentenced to undergo RI for 2 years with fine of Rs. 500/- and RI for 7 years with fine of Rs. 500/-, respectively, with default stipulations.
2. Facts of the case are that the Prosecutrix (PW1) is a married lady aged about 26 years. On 23/06/2011, she lodged an FIR (Ex.P-1) alleging therein that on 22/06/2011 at about 7:30 pm when she had gone to attend the call of nature, the Appellant came from behind and caught hold her. The Appellant committed forcible sexual intercourse with her. It was

further alleged by the Prosecutrix that she could not identify the Appellant at the time of incident, but after the incident when the Appellant (assailant) was fleeing from the spot, she recognized the face of the Appellant in the light of torch. It has been further alleged that after the incident when she switched on the torch, she found some documents and two photographs lying on the surface, which were fallen from the pocket of the assailant. She collected those documents and photographs and shown the same to Rupendra Kumar (PW7), whereupon Rupendra (PW7) told her that the photographs belongs to the Appellant. Thereafter, she reached to the police station and lodged the FIR. The police recorded the statement of the Prosecutrix as well as other witnesses under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. To prove the guilt of the Appellant, the Prosecution has examined as many as 10 witnesses. Statement of the Appellant under Section 313 of the Cr.P.C was recorded wherein he has pleaded his innocence and false implication in the matter. In his defence, the Appellant examined himself as DW1 and four other witnesses in his defence.

3. After completion of trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Appellant has been wrongly convicted without there being any sufficient evidence available on record. It has been submitted that the statement of the Prosecutrix (PW1) is not reliable because in her

statement there are material contradictions and omissions occurred. It has been further submitted that according to the case of the prosecution, the Prosecutrix was not knowing the Appellant previously and after the incident, in the light of torch she had seen the Appellant. In these circumstances, the test identification parade was required to be done which the prosecution has not done in this case. It has been further submitted that the husband of the Prosecutrix namely Santosh Das (PW6) himself has categorically stated that no such type of incident was happened with the Prosecutrix and due to pressure of Rupendra (PW7), a false and fabricated report was lodged by the Prosecutrix against the Appellant. Santosh (PW6) has also stated that the Photographs and documents which was produced by the Prosecutrix in the police station were provided by Rupendra to the Prosecutrix. It has been further submitted that from the statement of Rupendra (PW7), it is apparent that he was having previous enmity with the Appellant and therefore, there is every possibility to falsely implicate the Appellant in this case. It has been further submitted that mere recovery of photographs and documents does not establish that the assailants was the Appellant, therefore, the prosecution has failed to prove its case and the Appellant in these circumstances is entitled to get acquittal.

5. Learned counsel appearing on behalf of the State opposes the argument advanced by the counsel for the Appellant and submits that there is sufficient evidence available on record to convict the Appellant, therefore, the conviction does not require any interference.
6. I have heard counsel for the parties and perused the record minutely.

7. In her court statement, the Prosecutrix (PW1) has deposed that on the date of incident at about 7:30 pm, she had gone to attend the call of nature. When she seated there for the purpose, the Appellant came from behind and caught hold her. On being cry, the Appellant threatened her to kill and thereafter committed forcible sexual intercourse with her. She further deposed that she did not know the Appellant previously and when firstly the Appellant was brought to the Police station, she came to know about the Appellant. She further deposed that at the time of incident, there was darkness on the spot and when the assailant tried to flee from the spot then she saw his face in the light of torch. She further deposed that after the incident she was looking for her '*Lota*' then she found some documents and photographs from the spot. Thereafter, she returned to the house and narrated the incident to her husband. On the next day, she lodged the report. According to this witness, she had given the photographs and documents to the police officials and then the police officials told her that the documents and photographs belong to the Appellant. In her cross-examination, this witness has admitted that there is open land behind her house as Badi, where she could have easily attended the call of nature, but she visited towards Nala. She further admitted that at the side of Nala, the people usually comes. In para 18 of her cross-examination, she further admitted that at the time of commission of alleged act when the Appellant was removing his clothes, she did not flee. She further admitted that when her clothes was opened, she did not make any alarm or raise her voice. In para 21, she further deposed that after the incident, when the Appellant was fleeing from there, she saw his face in the light of torch, but this fact is not mentioned

in her diary statement. In para 26, this witness has further deposed that the photographs which were collected from the spot were given in the police station and there the police official told her that the photographs are of the Appellant. In para 29, she further deposed that she had gone for lodging the FIR in a Jeep along with her husband, Rupendra and his wife. In para 31 she further admitted that prior to 15 days of the recording of her statement before the Court, she returned to Village Sandi. Her husband was not present, therefore, she was residing in the house of Rupendra.

8. Shakuntla (PW2) supported the statement of the Prosecutrix and stated that the prosecutrix came to her house and told her that someone had committed rape with her when she had gone to attend the call of nature. She also stated that she had seen his face in the light of torch. The Prosecutrix also told her that she found some photographs and documents from the spot. In para 13, this witness has admitted that the Prosecutrix had never shown any photograph to her in her house and when she had gone to the police station along with her there she shown the photographs.
9. Santosh Das (PW6) is husband of the Prosecutrix. He has not supported the case of the prosecution and has turned hostile. According to this witness, no such type incident was happened with the Prosecutrix. This witness has deposed that due to pressure of Rupendra (PW7), a false report was lodged by her wife. He also deposed that Rupendra had provided photographs and documents to the Prosecutrix which were given to the police official while lodging the FIR.

10. Rupendra (PW7) has deposed that on 23/06/2011 in the morning, the Prosecutrix and her husband came there and told that some one had committed rape with the Prosecutrix. At that time, they shown some photographs to him. The Prosecutrix told him that the person raped her had missed photographs there. According to this witness, the photographs were of the Appellant. This witness has further deposed that the Prosecutrix also told him that she found some documents also. In his cross-examination, this witness has deposed that the Appellant is working with him in the same department and knowing each other for 10-15 years. During cross-examination, this witness has admitted that in the year 2004, a dispute had arisen between the Appellant and him. He further admitted that the Appellant had made rumor against him that he used to keep contraband. In para 16, this witness has further admitted that he had gone with the Prosecutrix, her husband and his wife for lodging the FIR in a Bolero vehicle which was taken on rent by him
11. M.S. Kavar (PW10), ASI is a witness who investigated the matter. In para 10 of his cross-examination he admitted that there was a previous enmity between the Appellant and Rupendra.
12. The Appellant examined himself as DW1. According to his statement, there is a enmity going on between Rupendra and him from 1999-2000. He deposed that Rupendra had approached Mamta Verma (DW2) for loding a false complaint against the Appellant. Mamta Verma (DW2) has supported the above statement of the Appellant and stated that in the month of June, 2011, Rupendra had met with her and told to falsely implicate the Appellant in a false case of rape, but she refused to do so.

13. Baliram Rawte (DW4) is Head Constable. He deposed that on 08/05/2012, the Prosecutrix came to her husband and made a written application that on the saying of Rupendra and her wife, she had lodged a false report against the Appellant. He made entry in this regard vide Ex.P-16 in Rojnamcha Sahna.
14. On minute examination of above evidence, it makes clear that the Prosecutrix is a major lady and married lady. According to her statement when the assailant was fleeing from the spot and turned, she saw his face in the light of torch. She has deposed that from the spot two photographs and some documents were found which she collected from there. This witness has not stated anything that the photographs which were found by her from the spot is the same person who committed rape with her. In the FIR she has stated that firstly she had shown the photographs to Rupendra (PW7) and his wife then they told her the photographs are of the Appellant, but in her Court statement she had stated that she firstly shown the photographs to the police official and then the police official told her that the photographs are of the Appellant. For the shake of arguments, if it is admitted that the photos which were of the Appellants were collected from the spot, yet it is not established that the assailant was the Appellant. Since she had seen the face of the Appellant in the light of torch, therefore, the identification of the Appellant was to be conducted which was not done by the prosecution and the same is fatal for the case of the prosecution. Apart from this, Santosh (PW6), husband of the Prosecutrix has not supported the case of the prosecution. According to this witness, due to pressure of Rupendra (PW7), a false report has been made by the prosecution. Baliram Rawte

(DW4) has also told that on 08/05/2012, the Prosecutrix had made a written application stating therein that she had made false report against the Appellant on the saying of Rupendra and his wife. From the statements of Rupendra (PW7) and Investigating Officer, M.S. Kavar (PW10), it is also established that there was previous enmity between the Appellant and Rupendra and according to the statement of Mamta Verma (DW2), Rupendra (PW7) had approached her to lodge a false complaint against the Appellant. Moreover, from the statement of the Prosecutrix, it is also revealed that prior to 15 days of the incident, she was residing in the house of Rupendra, therefore, it is clear that she is having cordial relation with Rupendra and Sakuntla. Looking to the entire evidence, it cannot be denied that due to above reasons, a false and fabricated report has been made against the Appellant.

15. Considering the above facts and circumstances, I am of the view that the alleged offence is not proved beyond all reasonable doubt and the Appellant is entitled to get benefit of doubt.
16. In the result, the appeal is allowed. The judgment of the trial Court is set-aside. The Appellant is acquitted from the charges framed against him. His bail bond be discharged immediately.
17. Records of the Court below be sent back along with copy of this Judgment for necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge