

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on : 24.08.2021Judgment delivered on: 24.09.2021**CRA No. 1206 of 2000**

- Rajendra Kumar S/o Bisoha Ram Sahu, aged about 38 years, Village Amapara, Balod Dist. Durg, M.P.

---- Appellant**Versus**

- State of M.P. through P.S. Balod, District Durg M.P.

---- Respondent**And****CRA No. 1643 of 2000**

1. Ramkumar @ Kumar, S/o. Narayan, aged about 46 years.
2. Sevaram son of Bhanwar Singh, aged about 45 years.

All residents of Amapara, Balod, P.S. Balod, District Durg, Chhattisgarh.

---- Appellants**Versus**

- The State of Madhya Pradesh, Through Police Station Balod, District Durg (MP)

---- Respondent

For Appellants	:	Mr. Pragalb Sharma & Ms. Indira Tipathi, Adv.
For State	:	Mr. Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**CAV Order****24/09/2021**

1. These appeals arise out of the impugned judgment of conviction and order of sentence dated 19.04.2000 passed by Additional Sessions Judge, Balod, District Durg, M.P. (Now Chhattisgarh) in Sessions Trial No. 279/99, whereby and

whereunder, learned Additional Sessions Judge has convicted and sentenced the appellants as described below:-

Conviction	Sentence
U/s. 450 of the IPC	R.I. for 10 years, each.
U/s. 376 (2)(g) of the IPC	R.I. for 10 years, each.

2. The prosecution case, as unfolded from the impugned judgment and the records of the case is that, on 03.09.1998 a report (Ex.P/2) was lodged by the prosecutrix (PW-2) alleging therein that in the intervening night of 2-3.09.1998 at about 1.00 O'clock appellant Rajendra Kumar knocked the door of the prosecutrix and asked for match box. When prosecutrix opened the door, appellants Rajendra Kumar, Ramkumar and Sevaram entered her house and started smoking. Thereafter, Ramkumar committed rape on her and while he was committing the offence, appellants Rajendra Kumar and Sevaram helped Ramkumar by standing outside the door. Thereafter, FIR (Ex P-2) was registered under Section 376 of IPC against the appellants. Prosecutrix gave her consent vide Ex p/3 (Ex P/3) for medical examination, thereafter, she was sent for medical examination to Government Hospital, Balode, where Dr. P. Baghel (PW-3) examined the prosecutrix and gave her report vide (Ex. P/6) and opined that sexual intercourse committed one day before since time of examination. Organs were well developed and no sign of struggle was found all over the body. Cloths of the appellant Ramkumar was also seized vide (Ex P-9) and same was sent for its examination to FSL, Raipur. According to which, spermatozoa was found on the clothes (underwear) of the appellant. After completion of investigation, charge-sheet has been filed and charges were framed against the appellants under

Section 450 and 376(2)(g) of the IPC.

3. So as to hold the accused/appellants guilty, the prosecution has examined as many as 6 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 19.04.2000, learned Additional Sessions Judge has convicted the appellants under Sections 450 & 376(2)(g) of the IPC and sentenced them as mentioned above in para 1 of this order. Hence, the present appeal filed by the appellants.

5. Assailing legality and validity of the impugned judgment of conviction and order of sentence, Mr. Pragalbh Sharma, learned counsel for the appellant in CRA No. 1206 would argue that the conviction and sentence of the appellant is bad, illegal and contrary to the law, facts and circumstance of the case. Learned Court below did not appreciate the evidence of prosecutrix (PW-2) who has falsely implicated the appellant in this concocted story. He further submits that the medical report of the prosecutrix, examined by Dr. P. Baghel (PW-3) does not support the prosecution case. Furthermore, Kanhaiyalal (PW-4) has also not supported the prosecution case. It is next argued that Investigating Officer (PW-6) has categorically stated that when the prosecutrix had lodged the report, she made no allegation of rape against appellant Rajendra Kumar, therefore, looking to all the facts, the appellant is liable to be discharged from all the charges levelled against him.

6. Ms. Indira Tripathi, learned counsel for the appellants in CRA

No. 1643/2020 submitted that the impugned judgment passed by the learned trial Judge is illegal, erroneous and bad in law and is liable to be set-aside. She further submits that there is fully contradiction in the statement given by the prosecutrix in First Information Report, in police statement and the statement given before the Court. It is next submitted that learned trial Court failed to see that prior to incident a quarrel was taken place between the prosecutrix and one Janki Bai, '*bua*' of the accused person, in which the appellants have supported Janki Bai and only for this reason the prosecutrix has falsely implicated the appellants, therefore, the impugned judgment is liable to be set-aside. In support of her argument, learned counsel for the appellant placed reliance on the decision of Hon'ble Supreme Court in the matter of ***Dola Alias Dolagobinda Pradhan & Another Vs. State of Odisha*** reported in ***(2018) 18 SCC 695***.

7. On the other hand, learned State counsel has supported the impugned judgment of conviction and order of sentence of the Court below convicting the appellants under Sections 450 & 376(2) (g) of the IPC, being based on the material available on record, are just and proper and do not call for any interference in these appeals.

8. I have heard learned counsel for the parties and perused the records including the impugned judgment.

9. The prosecutrix (PW-2) has deposed in her statement that in the intervening night of incident, appellants knocked the door and asked for match box. After smoking, all the appellants committed rape on her and after an hour they went from there. In the FIR, she stated that Ramkumar laid her on the ground and committed

forceful sexual intercourse on her while other two appellants namely Rajendra Kumar and Sevaram were outside the house. In para 17 of her cross-examination she stated that it has been wrongly written in Ex D-1 that, "मुझे जमीन पर लिटाकर" . How it was written she does not know. What she has told was that "मैंने खाट पर संभोग करना लिखाया था,"

10. On 03.09.1998, Dr. Smt. P. Baghel (PW-3) examined the prosecutrix, gave her report vide (EX P-6) and opined that the prosecutrix is habitual for sexual intercourse. In her cross-examination, Dr. P. Baghel (PW-3) admitted that she was not found any internal or external injury over the private part of the prosecutrix. Assistant Sub-Inspector A.P. Upadhyay (PW-6) was examined before the trial Court and in para 11 of his statement he stated that the prosecutrix had not mentioned in the report that appellants Rajendra and Sevakram has committed rape with her. Again in para 12 he stated that:-

प्रार्थिया ने प्र. डी.-1 में अ से अ का भाग "मुझे जमीन पर लिटाकर" ब से ब भाग में "राजेंद्र, सेवाराम बाहर रहे" और स से स का भाग "जो आज सुबह मोहल्ले के पेमिनबाई साहू को घटना का सारा हाल बताई" लिखाया था।

11. Hon'ble Supreme Court in the case of **Dola** (Supra) held in para 6 held, which reads thus:-

"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 on a 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."

In the instant case, prosecutrix (PW-2) in her report stated against only appellant Ramkumar that other two accused persons were standing outside the house but in her Court statement she stated that all the three accused persons have committed rape with her and, in her cross-examination, she exaggerated her version. It is clearly mentioned in the medical examination report (Ex-P/6) of the prosecutrix that she is habitual for sexual intercourse and, in her cross examination Dr. P. Baghel (PW-3) stated that she did not notice any external or internal injury on her private part or other part of the body.

12. The appellants examined 4 witnesses in their defence. Sumitra Bai (DW-1) stated that prosecutrix came to her house and demanded Rs. 200/- and also threatened her to lodge a report if the money was not given to her. Leela Singh (DW-2) stated in her examination that one Kanhaiyalal has informed her that prosecutrix has beaten her mother Janki Bai thereafter, he went with Anant Ram, Kanhaiya Lal, Rajendra kumar & Sevaram to the house of prosecutrix and told her not to fight with her mother

again and then came back from there. On the very next day, Rajendra and Sevaram were arrested. Anant Ram (DW-3) also stated that he along with accused persons went to the house of prosecutrix and asked the reason for quarrel. Janki Bai (DW-4) stated in her deposition that prosecutrix quarreled and beaten her and she (Janki Bai) had lodged a report against her. Prosecutrix denied allegation of defence witnesses stating that Janki Bai had lodged false report against her. Even Medical Officer and Investigating Officer have not supported the prosecutrix' version.

13. After going through the entire material available on record, this Court is of the clear opinion that the prosecutrix had a motive to seek revenge against the appellants. The testimony of the victim is in the peculiar facts and circumstances of this case, self destructive and needs to be discarded. Her evidence is not free from blemish. The evidence of prosecutrix is full of contradiction and omissions which was not supported by Investigating Officer as well as by Medical Report. The trial Court has convicted the appellants without considering the aforementioned facts in its proper perspective.

14. Having regard to the totality of the material on record, facts and circumstance of the case, the finding of the trial court is not sustainable. Accordingly, both the appeals are allowed. The judgment of the trial Court is set aside. The appellants are acquitted of the charges levelled against them. They are on bail. Their bail bonds stand discharged.

Sd/-
(Rajani Dubey)
JUDGE

V/-