

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 298 of 2002**Order Reserved on : 30.09.2021Order Delivered on : 15.12.2021

- Jai Singh S/o Bali, aged 32 years, occupation cultivation, Resident of village Badalavand, Chuki Bakawand, Thana Nagar Nar, District Bastar (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through The District Magistrate, Bastar at Jagdalpur (C.G.)

---- Respondent

For Appellant. -	Ms. Seema Singh, Advocate.
For Respondent -	Mr. Ishwar Jaiswal, P.L.

Hon'ble Smt Justice Rajani Dubey**CAV Order**

1. This appeal arises out of the judgment of conviction and order of sentence dated 03.01.2002 passed by Special Judge, (Scheduled Castes and Scheduled Tribes) (Prevention of Atrocities)/ Additional Sessions Judge, Jagdalpur (C.G.), in Sessions Trial No.515/2000 convicting the accused/appellant under Sections 376 (1) IPC & sentencing him to undergo R.I. for seven years with fine of Rs.2,000/-, plus default stipulations.
2. As per the prosecution case, on 11.10.2000 FIR (Ex.P/1)

was lodged by the prosecutrix (PW/1), alleging in it that on 08.10.2000 at about 11.30 pm, she along with her 3 year daughter was sleeping on platform near the house and her husband had gone to see V.C.R. saying that he would come after some time. When the prosecutrix was in deep sleep, the accused/appellant came there, caught hold of her hands, gaged her mouth by left hand and committed forcible sexual intercourse with her. It has been also alleged that when the sexual intercourse was being committed, husband of the prosecutrix came there and on seeing her husband the accused/appellant ran away from the spot. Based on this, offence under Sections 376 IPC was registered against the accused/appellant. On 10.10.2000, the prosecutrix was medically examined vide Ex.P/2 by Dr. (Mrs.) A. Chandra Rao (PW/5) who opined that no positive finding of recent forceful sexual intercourse was noticed and the prosecutrix is habitual for sexual intercourse. The accused/appellant was also medically examined vide Ex.P/4 and was found to be capable of performing sexual intercourse.

3. After investigation, charge sheet was filed against the accused/appellant under Section 376 (1) IPC.
4. So as to hold the accused/appellant guilty, the prosecution examined as many as 06 witnesses. Statement of the accused/appellant was also 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.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.
6. Learned counsel for the appellant submits as under:
 - (i) That the accused/appellant has been falsely implicated in the crime in question.
 - (ii) That even if the entire prosecution case is taken as it is, prima-facie no case is made out against the appellant. It has been also argued that when the husband of the prosecutrix saw the appellant and prosecutrix in the objectionable condition, the report has been lodged that too after three days of the incident.
 - (iii) That there is contradiction and omission in the statement of the Prosecutrix (PW/1) and the FIR (Ex.P/1) and has changed the entire prosecution story.
 - (iv) That there is delay of about 3 days in lodging the FIR and no plausible explanation has been given by the prosecution in this regard.
 - (v) That there is contradiction in the statement of Prosecutrix (PW/1) and her husband Tularam (PW/2) on material point which shows that the

accused/appellant has been falsely implicated in the crime in question. Tularam (PW/2) has stated in his statement that he had seen two persons, one ran away from the place of incident and the another one was caught in the house but PW/2 has not stated the name of second person either in his 161 Cr.P.C. statement or before the Court below.

(vi) That the appellant has received 26% permanent disability and on the date of incident there was plaster on his leg and he could walk only with the assistance of stick and in such a condition it is not possible for the appellant to run away from the spot as has been stated by Prosecutrix (PW/1) and her husband Tularam (PW/2) in their evidence. Therefore, the impugned judgment of conviction and order of sentence is liable to be set aside.

7. On the other hand, learned counsel for the State supporting the impugned judgment of conviction and order of sentence submits that the learned trial Court has rightly convicted the appellant and no interfere is called for.
8. I have heard learned counsel for the parties and perused the material available on record.
9. Prosecutrix (PW/1) has stated that on the date of incident at about 11.30 pm, wen she along with her daughter was sleeping on the platform near the house, the accused/appellant came there, pushed her down the

platform and committed forcible sexual intercourse. When her husband came there and saw the appellant, he ran away from the spot. The prosecutrix, in para 13 of her evidence, denied the suggestion of defence that the appellant could not walk due to the accident and that she is deposing before the Court just to implicate the appellant falsely. She has also denied the suggestion that she lodged the report just because the appellant had removed her from kitchen-garden.

10. Tularam (PW/2) is husband of the prosecutrix. He has stated in para 6 of his cross-examination that at the time of incident there were two persons. The appellant, after seeing him, ran away from the spot and another one entered into kitchen-garden. He has also stated that in police station he had told about both the accused persons but he does not know how the police left another accused person. In para 9, this witness has admitted that it's been one year since the appellant's leg was broken.
11. Mansadan (PW/3) is the villager. He has stated in his evidence that Tularam (PW/2) had convened a Panchayat meeting in which appellant and prosecutrix were present. Prosecutrix told that a thief had entered their house, then this witness asked as to why the thief had entered her house. At this stage, this witness has been declared hostile. In para 3 of his cross-examination, this witness has stated that the prosecutrix had told that

appellant had entered her house and committed rape with her.

12. Padam (PW/4) has not supported the case of the prosecution but stated that in a panchayat meeting the prosecutrix had told that the appellant has committed rape with her.
13. Dr. (Smt.) A. Chandrakar (PW/5) examined the prosecutrix on 10.10.2000 and gave her report Ex.P/2 opining that no positive sign of recent forceful sexual intercourse was noticed in her body and the prosecutrix is habitual for sexual intercourse.
14. In the instant case, the age of the prosecutrix is 30 years and she is a married one. It has come in the evidence of Prosecutrix (PW/1) that prior to the incident, they were the tenant of appellant and almost 5 years have been passed leaving his house. In para 2, the Prosecutrix has stated that when she was sleeping on platform, the appellant came there, pushed her down the platform and started committing sexual intercourse, upon which she told him that as to why he is doing so and if her husband comes, he would kill her. The evidence of the prosecutrix makes it crystal clear that though she has levelled allegation of rape against the accused/appellant but during the course of sexual intercourse she did not resist the act of the appellant nor called anyone for help. The Prosecutrix is not consistent while deposing in the Court. As per her diary statement and contents of FIR,

the accused/appellant entered her house, caught hold of her both hands, gagged her mouth and committed forcible sexual intercourse with her, whereas as per her Court statement, the appellant first pushed her down the platform where she was sleeping and then committed forcible sexual intercourse. It is worth mentioning here that when the appellant pushed her down, she had ample opportunity to raise alarm but, according to her court statement, she could not do so because when she tried to raise alarm her mouth was gagged by the appellant. That apart, Tularam (PW/2), husband of the prosecutrix, developed a new story that he had seen two persons when he came to his house. The present appellant, after seeing him, ran away from there and another entered into kitchen-garden. There is contradiction and omission in the statements of prosecutrix PW/1 and her husband PW/2. It is surprising to note here that the prosecutrix did not utter a single word about another accused either in 161 Cr.P.C. statement, in FIR or in the Court statement.

15. As regards commission of rape, Dr. (Smt.) A Chandrakar (PW/5), who examined the prosecutrix, and gave her report (Ex.P/2), clearly demonstrate that no recent sign of forceful sexual intercourse was noticed in the body of prosecutrix, nor any injury was noticed. It has also come in the evidence of prosecution witness (PW/2) that it's been one year since the appellant's leg was broken. In

this context, the disability certificate (Ex.P/13) has been issued on 04.09.2001 by Dr. B.K. Jha (PW/8), Assistant Surgeon, Maharani Hospital, Jagdalpur, who has stated that the appellant was admitted in hospital from 4.06.2000 to 06.06.2000 and total permanent physical disability of appellant's left leg is 26%. The Doctor has also stated that the appellant could not walk and run without the help of stick. Thus, taking into consideration all the aforesaid facts, the possibility of accused/appellant being falsely implicated in the crime in question cannot be ruled out.

16. The findings recorded by the Court below thus appear to be beyond proper appreciation of the evidence adduced by the prosecution which cannot have affirmation from this Court. Since, the prosecution has failed on all fronts to prove its case beyond shadow of doubts, the benefit, of course, has to go to the accused/appellant.
17. The appeal is thus allowed, judgment impugned is hereby set aside and the accused/appellant stands acquitted of the charges levelled against him. As the appellant is reported to be on bail, his bail bonds stand discharged.

Sd/-

(Rajani Dubey)
JUDGE