

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1076 of 2002

- Chait Ram

---- Appellant

Versus

- State of Chhattisgarh

-----Respondent

Post for pronouncement of the judgment on 14.09.2021

____Sd/-____
JUDGE

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on : 06.07.2021Judgment delivered on : 14.09.2021CRA No. 1076 of 2002

- Chaitram S/o. Samaru Kewat, Aged 39 years, Residing at Village Jewra, PS Pamgarh, district Janjgir-champa (CG)

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station Pamgarh district Janjgir-Champa CG

---- Respondent

For Appellant	: Shri Sudhir Bajpai and Shri S.V.Purohit, Advocates
For Respondent/State	: Ms. Ishwari Ghritlahre, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Judgment****14/09/2021**

This appeal arises out of judgment and order dated 24.09.2002 passed by the Second Additional Sessions Judge (FTC), Janjgir District Janjgir-Champa (CG) in S.T. No. 171/99 convicting the accused/appellant under Section 376 (1) IPC sentencing him to undergo rigorous imprisonment for 7 years with fine of Rs. 100 plus default stipulation.

2. Brief facts of the case are that on 23.01.1999, FIR (Ex.P-2) was lodged by the prosecutrix (PW-5), alleging that on 13.01.1999, when she was all alone in the house, at about 8.00 p.m. the accused/appellant jumped from the wall of the backyard, came inside and after throwing her on the floor, removed her as well as his clothing, committed forcible sexual intercourse and ran away. She raised alarm but no one came to help. Thereafter in the morning she went to her parents' house and when his father returned after 2-3 days, her mother informed him and then the report was lodged at the police station Pamgarh. Prosecutrix was medically examined on 24.01.1999 by Dr. Smt. Lalita Minj (PW-11) vide Ex. P-1 and she opined that no definite opinion can be given with regard to rape. After investigation, charge sheet was filed on 12.04.1999 under Section 376 IPC and accordingly charges were framed.

3. So as to hold the accused/appellant guilty, prosecution has examined 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charge leveled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, trial Court has convicted and sentenced the accused/appellant as mentioned in para one of this judgment. Hence the present appeal.

5. Contention of the counsel for the appellant is that the report was lodged with unexplained delay of 10 days and the medical evidence does not corroborate the version of the prosecutrix. He referred to the evidence of the prosecutrix (PW-1) as well as the medical evidence to

support his submission that no offence of rape as such has been committed on the prosecutrix. Dr. Smt. Lalita Toppo (PW-4) who conducted the medical examination of the prosecutrix however, has stated that there was no sign of injury found on the prosecutrix and no definite opinion can be given about rape. He further submits that the prosecution has failed to prove the case beyond reasonable doubt.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

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

8. Prosecutrix (PW-5) has stated in para 2 of her statement that the accused entered her house and committed forcible sexual intercourse with her and when she raised alarm, none of them had come. She has stated that though Jeevrakhan was present in the house but he also did not come to rescue her. In para 3, she has stated that on the next day she informed about the incident to the Milkman Fandu (PW-1) and also to her mother. She has stated that as her father was not at home, she could not inform him. It is thus clear from Ex.P-2 that the date of incident is 13.01.99 (Ex.P-2) and the date of lodging FIR is 23.01.99 i.e. after 10 days of the incident. Dr. Lalita Toppo (PW-4) has stated that she examined the prosecutrix on 24.01.99 and opined that no external or internal injuries were found on the person of the prosecutrix. She has stated that no definite opinion can be given about rape.

Fandu (PW-1) has stated that he was informed by the prosecutrix that the appellant has committed rape on her. He has stated that he asked her to inform the Kotwar. Geeta Bai (PW-3) mother of the prosecutrix has stated that the prosecutrix has informed about the incident in the morning and then they both went to the police station and reported the matter.

9. In defence, the appellant suggested that there was previous enmity with his wife and the complainant/prosecutrix. It has been stated by the prosecutrix that the delay in lodging the FIR occurred as her father was not at home and had gone to another village and it was only when her father came, the report was lodged. The prosecutrix remained firm and nothing could be elicited from her. Reliance has been placed upon the judgment of the Apex Court in the matter of **Bharwada Bhoginbhai Hirjibhai vs State Of Gujarat on 24 May, 1983** reported in **1983 (3) SCC 217**, wherein it has been held that :

6. 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

disbelieved her outright.”

10. The prosecutrix has deposed that on the date of incident, at night, accused entered his house and committed rape on her. Prosecutrix has denied the fact that some quarrel took place between them and therefore a false allegation has been levelled against the appellant but it has been mentioned in the FIR (Ex.P-2) and the Investigation Officer Jayendra Singh (PW-11) has also stated in his examination-in-chief that the report was written by him as narrated by her. This witness has admitted in his deposition that the date of incident was 13.01.1999 and report was lodged on 23.01.99. Dr. (Smt.) Lalita Toppo (PW-4) has medically examined the prosecutrix and opined that no definite opinion can be given with regard to rape. Thus, the medical evidence does not support the case of the prosecution. The evidence of the prosecutrix and her mother (PW-3) are unreliable and untrustworthy inasmuch as they are not credible witnesses. Their evidence is full of omissions and contradictions.

11. Defence witness Nandjharokha (DW-1) has stated in his evidence that appellant has informed him that his wife used to clean utensils in the house of the prosecutrix and she was not paid for the same since four months and has falsely implicated him in the crime in question. Moreover, no satisfactory explanation has been given by the prosecutrix for the delayed FIR. Geeta Bai (PW-3) mother of the prosecutrix has stated in her cross-examination at para 6 that the incident was not known to the villagers. The prosecution case is based on the material available on record which does not seem true. After going through the entire material on record it is clear that the prosecutrix apparently had moved to seek revenge from the appellant.

The testimony of the prosecutrix in the peculiar facts and circumstances of the case needs to be discarded, since her testimony is a result of seeking revenge from the accused and as her evidence is not free from blemish. The principles have been explained by the Apex court in the matter of **Dola @ Dolagobinda Pradhan Vs The State Of Odisha reported in 2018 Vol. 18 SCC 695**. The Trial Court has convicted the appellant without considering the aforementioned factors in their proper perspective. The testimony of the victim is full of inconsistencies and does not find support from any other evidence whatsoever. Moreover, the evidence of the informant/victim is inconsistent and self-destructive at different places. It is noticeable that the medical record and the Doctor's evidence do not specify whether there were any signs of forcible sexual intercourse. It seems that the First Information Report was lodged with false allegations to extract revenge from the appellant.

12. Having regard to the totality of the material on record it is not possible for this Court to agree with the conclusion reached by the court below. Accordingly, the appeal is allowed. The judgment of the trial court is set aside. Appellant is acquitted of the charges levelled against him. Appellant is on bail. His bail bonds stand discharged.

Sd/-

(Rajani Dubey)

Judge