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Reserved on : 24.09.2026

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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 179 of 2024

1 - Xyz

... Appellant(s)

versus

1 - State Of Chhattisgarh Through Police Station Bilaigarh, District : Balodabazar-Bhathapara, Chhattisgarh

2 - Prahlad Kumar Rakesh S/o Chaituram Rakesh Aged About 24 Years R/o Bazar Road, Bilaigarh Police Station Bilaigarh, District : Balodabazar-Bhathapara, Chhattisgarh

... Respondent(s)

For Appellant	:	Mr. Ashwin Panickar, Advocate
For State	:	Ms. Shailja Shukla, Govt. Advocates
For R/2	:	Mr. K.K. Dewangan, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas, Judge and
Hon'ble Shri Sudhir Kumar, Judge

C.A.V. JUDGMENT

***Per* Narendra Kumar Vyas,J.**

1. The acquittal appeal has been filed by the appellant-complainant against the judgment of acquittal passed by the First Additional

Sessions Judge, Baloda Bazar (C.G.) dated 29.11.2022, in Sessions Case No. 78/2019, whereby respondent No.2/accused has been acquitted of the charges punishable under Section 376 of the IPC.

2. The prosecution case, in brief, is that:-

A. The victim filed written complaint before the State Human Rights Commission on 01.02.2019 alleging the atrocity committed by the Thana Incharge C.R. Chandra who is relative of the accused's family and against inaction of the police in lodging the FIR. The Commission forwarded the complaint to the Superintendent of Police and thereafter the FIR (Ex.P/3) bearing Crime No. 65/2019 was lodged on 09.03.2019 by the Police Station Bhilagarh for commission of offence under Section 376 of the IPC.

B. As per the case of the prosecution, on 17.12.2018, at about 7:30 p.m., when the victim was cooking food in her house, her brother-in-law/accused Prahlad Kumar Rakesh entered her house and caught hold of her from behind and wrapped his arms around her abdomen. Despite her repeated objections the accused did not leave her. At that time, her three children were studying in another room. Despite her repeated resistance, the accused placed his hand on her chest and pressed her breast. He pulled her sari, lifted her petticoat, pushed her to the ground and lay over her, and tore her undergarment. He then climbed over her. The victim continued to struggle and tried to push him away, but she was unable to do so. In order to keep silence her, the accused pressed his mouth

against hers and thereafter raped her. After committing the rape, when the accused removed his mouth from hers, the victim raised an alarm. Hearing her cries, her children came there, whereupon the accused fled away from the spot. The victim narrated the incident to her daughter and after gathering courage, the victim went to Police Station Bilaigarh to lodge a report against the accused but the police officers to protect the accused have deliberately avoided registration of FIR which has compelled her to lodge complaint before the Human Rights Commission. Thereafter, on the interference of the Commission, the FIR has been lodged.

C. After usual investigation, a charge-sheet was filed against the accused on 01.11.2019 before the Court of the Judicial Magistrate First Class, Bilaigarh who vide order dated 05.11.2019 committed the case and on committal the case was received by the First Additional Sessions Judge on 26.11.2029.

3. The prosecution to prove its case examined as many as 8 witnesses and exhibited 11 documents and the accused in his defence examined as many as 3 witnesses and exhibited 19 documents. The accused was examined under Section 313 of the Cr.P.C. wherein he has taken plea of false implication and did not adduce any evidence. In his statement recorded under Section 313 of the Cr.P.C. he has taken plea of false implication and alibi stating that he was at Raipur at the time of alleged incident.

4. On the basis of the evidence and material available on record, the learned Trial Court recorded a finding that the prosecution has

failed to prove the charges against the accused beyond reasonable doubt. Consequently, the learned Trial Court acquitted the accused of the charges framed against him. Being aggrieved by the aforesaid judgment of acquittal, the victim has preferred the present acquittal appeal.

5. Learned counsel for the appellant would submit that the learned trial court has failed to appreciate the evidence available on record and wrongly acquitted the accused. He would further submit that learned trial Court has wrongly drawn adverse inference of malafide owing to multiple court cases whereas claim of the victim gets strengthened by the multiple cases that the rape was a trick to discourage the victim. He would further submit that learned trial Court has also erred in giving undue weightage to the fact that within a short distance the children were studying to raise doubt over the case of the prosecution. Thus, findings are perverse, as such, the judgment of acquittal deserves to be set aside by this Court and would pray for allowing the appeal.

6. Learned State counsel, supporting the appeal, would submit that the learned Trial Court has committed a serious error in appreciating the evidence available on record and has erroneously acquitted the accused. Learned State counsel would further submit that the learned Trial Court has failed to appreciate the evidence in its proper perspective and has considered the alleged discrepancies in isolation instead of examining the prosecution evidence as a whole. She would further submit that

the conduct of the victim immediately after the occurrence is also a relevant circumstance supporting the prosecution case. The fact that the complainant immediately approached the police and tried to lodge the report on the same day, without any unreasonable or unexplained delay, lends assurance to the prosecution version. Thus, she would pray for allowing the appeal.

7. Per contra, learned counsel for respondent No.2/accused opposing the aforesaid submission would submit that the learned Trial Court, after appreciating the entire evidence available on record, has rightly acquitted the accused. He would further submit that the findings recorded by the learned Trial Court are based upon proper appreciation of evidence which are neither perverse nor contrary to the material available on record. He would further submit that the accused was not present at the place of alleged incident as he was present at Raipur where he was studying Bachelor of Computer Application course. The prosecution was required to prove by reliable and cogent evidence, the occurrence as alleged and the involvement of the accused therein which they miserably failed to prove.

8. He would further submit that the statement of the daughter of the victim and the victim suffers from material contradictions, omissions and inconsistencies on material particulars concerning the manner in which the alleged incident took place. The prosecution story, particularly regarding the conduct of the accused, the sequence of events and the circumstances in which

the accused allegedly escaped from the house, does not inspire confidence. Particularly, the statement of the victim is not of sterling quality to base conviction. The victim has lodged various cases against the family members of the accused to harass them and in continuation of the same habit, she has falsely implicated him in the present case. The learned Trial Court has rightly examined these discrepancies and, upon proper appreciation of the evidence, found that the prosecution version was not free from doubt. It is further submitted that the medical evidence does not lend corroboration to the prosecution case.

9. He would further submit that in an appeal against acquittal, the accused continues to enjoy the presumption of innocence, which stands further strengthened by the judgment of acquittal passed by the learned Trial Court, unless the findings recorded by the Trial Court are shown to be manifestly erroneous, perverse, or wholly contrary to the evidence on record. Learned counsel would, therefore, submit that the appellant has failed to demonstrate any perversity, illegality or material misappreciation of evidence in the impugned judgment. The learned Trial Court has assigned cogent and plausible reasons for extending the benefit of doubt to the accused. Accordingly, the impugned judgment of acquittal does not warrant any interference and the appeal preferred by the victim deserves to be dismissed.

10. We have heard learned counsel for the parties and perused the record with utmost circumspection.

11. After considering the submission of the learned counsel for the parties and perusal of the record the point emerged for consideration is:-

> "Whether the findings recorded by the learned Trial Court, resulting in acquittal of the respondent/accused, are contrary to the evidence on record and perverse, warranting interference by this Court?".

12. To appreciate the point of determination, it is expedient for this Court to examine the evidence brought on record by the prosecution.

13. **Evidence of the victim (PW/1) : -** The witness, in her examination-in-chief, reiterated the prosecution case and, in paragraph 9, stated that her underwear was sought to be seized, however, as the same was torn, she had kept it at a place which she could not recollect and, therefore, she was unable to produce it for seizure. In paragraph 11, she stated that on 18.12.2018, her in-laws approached her and requested her not to lodge a complaint, assuring her that they would take care of her. They further proposed to provide her a room in her matrimonial house. However, when she went to the matrimonial house, she was allegedly abused and assaulted by them. In her cross-examination, she admitted that she was residing in a single-room house which had been partitioned into two portions by bricks. She further admitted that her husband used to visit her and his last visit was on 06.11.2021 and on that date he made physical

relationship with her. She also admitted that, in September 2021, her husband had instituted a divorce petition against her. With regard to the incident, she admitted that she could have raised an alarm, but initially she was requesting the accused to leave her. According to her, thereafter, the accused pressed her mouth, due to which she could not raise an alarm. She further stated that while the accused held her mouth with one hand, he opened the chain of his pant with the other hand. When it was asked to her that it is not possible to open the pant with one hand, she clarified that the accused had only opened the chain of his pant and she did not know whether he was wearing underwear or not. She further admitted that the accused remained there for approximately 4–5 minutes. As regards the delay in lodging the FIR, she stated that the Station House Officer was a relative of the accused and, therefore, did not register her complaint for many days. She further stated that she visited the police station for about 15 days and thereafter approached the Human Rights Commission and only upon intervention of the Commission the FIR was registered, i.e. on 09.03.2019, approximately 23 days after the date of the alleged incident.

14. **Evidence of the daughter of the victim (PW/2) : -** In her examination-in-chief, the witness reiterated the prosecution case and stated that at the time of the alleged incident, she and her two sisters heard the voice of their mother. Upon hearing her cries, all three sisters rushed to the room and saw the accused was lying

on top of their mother. On seeing the accused, they questioned him as to what he was doing, whereupon the accused fled away from the spot. In her cross-examination, the witness admitted that hair of her mother was not knitted, this fact has been stated for the first time before the trial Court. She has further admitted that due to dispute between them with her grand fathers' family there are no family terms between them for the last 8-10 years.

15. **Evidence of Dr. Neha Gangeshree (PW/4) : -** In her examination-in-chief, she has stated that there was no sign of struggle on the body of the victim, therefore, she cannot give any definite opinion with regard to forcible sexual intercourse and exhibited report (Ex.P/7A).

16. **Evidence of the accused (DW/1) : -** In his examination-in-chief, the accused denied the allegations levelled against him and stated that, on 17.12.2018, the date of the alleged incident, he was at Raipur pursuing his BCA course. He further stated that, after about two to three months, he received a telephone call from his family informing him that the victim had lodged an FIR against him. He further deposed that, during the course of investigation, the police had visited his room at Raipur, where two of his friends were also present. According to him, his friends informed the police that he was present at Raipur on the date of the alleged incident. He further stated that the police had also verified the location of his mobile phone and found that he was at Raipur on the relevant date. In his cross-examination, he stated that the victim resides in

a house comprising one room, one kitchen and a small kitchen garden. He clarified that he was aware of the said particulars on the basis of his visit to the said house when he was studying in Class VII or VIII. The witness exhibited the order passed by the learned trial Court dated 16.06.2015 (Ex.D/4) by which the accused's brother, father and mother were acquitted from the charges of commission of offence under Section 498A, 34 of the IPC lodged by the complainant and also exhibited the order dated 06.11.2012 (Ex.D/5) by which the complainant has been convicted under Section 506(II), 323 of the IPC, order dated 23.08.2018 (Ex.D/7) by which the accused's brother and father have again been acquitted from the offence of Section 498A, 323/34 of the IPC. The accused has also exhibited the copy of the complaint filed by the victim under Section 12 of the Domestic Violence Act (Ex.D/8) and order sheets as Ex.D/9) by which the complaint against remaining accused except Laxmi Prasad and Prahlad was allowed to be continued, FIR (Ex.D/10) lodged by the victim against the accused's mother and father under Sections 294, 323, 506B, 452, 34 IPC.

17. **Evidence of Chaitu Ram Kahra, father-in-law of the victim (DW/2) :-** In his examination-in-chief, he denied the allegations levelled against the accused and stated that the victim had given a letter threatening him in writing that she would destroy his family. He further stated that, looking to the conduct of the victim, he had constructed a house at Banglabhata, where the victim was

residing with her husband and daughters. He further stated that in the year 2009, his son telephonically informed him that he was unwell. Upon reaching Banglabhata, they found his son lying in a pool of blood. His son informed him that the victim had assaulted him with a stone grinder and a knife and thereafter she had gone to her parental home. He took his son to the hospital and lodged a complaint in respect of the incident. The victim was subsequently convicted by the Court and fined reiterated the contents of the charges levelled against the victim and also mentioned the details of criminal cases lodged by the complainant. He further stated that his youngest son, i.e. the accused, was studying at Raipur and had been falsely implicated in the present case.

18. **Evidence of Laxmi Prasad Rakesh, husband of the victim (DW/3) : -** In his examination-in-chief, he reiterated the stand taken by his father (DW-2) and stated that the victim had instituted a proceeding under the Domestic Violence Act against him, his parents and other relatives before Janjgir Court, which is still pending consideration. He further stated that the victim had also instituted a proceeding against him under Section 125 of the CrPC before the Janjgir Court, pursuant to which he is paying maintenance of ₹5,500/- per month. He stated that, on account of default in payment of maintenance, he had been sent to jail on about twelve occasions. He further deposed that the victim is highly quarrelsome, short-tempered and vindictive in nature due to which in retaliation, she had instituted several false cases against

him and his family members. He stated that she had also lodged a false case of rape against his younger brother, i.e. the accused in the present case. He further stated that, being fed up with the conduct of the victim, he had filed a divorce petition before the Family Court at Baloda Bazar. According to him, the victim continues to threaten him by stating that either he should keep her with him or she would kill him by causing a vehicular accident. In his cross-examination, he stated that during the year 2013–14, he had gone to Jammu and Kashmir for livelihood. He returned in the year 2019, and thereafter he came to know that the victim had lodged an FIR against his younger brother, i.e. the accused, for an offence punishable under Section 376 of the IPC. He further stated that he had no knowledge as to whether, on the date of the alleged incident, the accused was at Raipur or at Bhilaigarh. He denied the suggestion that the Thana In-charge was his relative.

19. The learned trial Court considering the evidence of Doctor PW/4 has recorded its finding in paragraph 50 that there was no sign of forceful commission of offence of rape on the body of the victim. Learned trial Court has also recorded its finding that from 3-4 feet of the place of occurrence the children were studying, as such it is not possible that in case commission of offence of rape is committed the children would have not heard the hue and cry of the victim and would not have come to rescue. The Trial Court while considering the evidence that the incident was occurred in the Kitchen where the victim was preparing food in the earthen

stove then also she can attack with any of the material available at the place of occurrence as both her hands were free and she could have resisted. The trial Court has also recorded its finding that PW/2 in her evidence before the trial Court has admitted that she has not mentioned the fact that the respondent No. 2 was climbing over her mother in her statement under Section 161 of the Cr.P.C. which also indicates that the witness has improved her statement. It has also recorded its finding that there is material contradiction and omission in the evidence of the victim and her daughter. The trial Court was also rightly impressed with the inter-se dispute between the complainant and the family members of the accused to record a finding that complainant's statement was not of sterling quality for recording of the conviction coupled with the opinion of the doctor and the medical evidence.

20. Further considering that the victim in her evidence has deposed that the accused has committed offence of rape after tearing her undergarment but that was not produced by her despite demanded by the prosecution which goes against the case of the prosecution as it was a vital piece of evidence which could have thrown light on the case of the prosecution. In absence of any cogent or reliable evidence the trial Court was justified in acquitting the accused.

21. Even from the appreciation of the evidence brought on record, particularly the statement of PW/1 the Victim which is not of a sterling quality, it will not be safe for this Court to reverse the well

reasoned finding of acquittal passed by the learned trial Court while hearing acquittal appeal. This Court cannot lose sight of the legal preposition that on the statement of the victim an accused can be convicted for commission of offence under Section 376 of the IPC but it should be of sterling quality whereas in the present case the victim's statement does not confer confidence upon the case of the prosecution for recording of conviction. The reasoning and recording of acquittal by the trial Court on evidence led by the prosecution, which is not of sterling quality, is in accordance with law laid down by the Hon'ble Supreme Court in **Santosh Prasad Vs. State of Bihar {2020 (3) SCC 443}** wherein the Hon'ble Supreme Court has held as under :-

> 6. Having gone through and considered the deposition of the victim, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the victim is not believable. In the examination-in-chief, the victim has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the victim has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW5 - victim, it is unfortunate that the said witness has failed to pass any of the tests of "sterling witness". There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not

> believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the victim – PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.”

22. Again Hon’ble Supreme Court in case of **Nirmal Premkumar vs. State Represented by Inspector of Police {(2024) 20 SCC 293}** has examined the issue and recorded its finding as under:-

> “24. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the victim ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the victim, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”

23. Even otherwise, it is well settled position of law that if one view has been taken by the trial Court which is in favour of the accused, normally the appellate Court should not interfere in the case of acquittal, unless the finding is so perverse that only one view of conviction is possible for the appellate Court. Hon’ble Supreme Court in case of **Constable 907 Surendra Singh and Anr vs. State of Uttarakhand {2025 INSC 114}** dealt with the issue when an appellate Court can interfere in the order of acquittal passed by the trial Court and held in paragraph 12 as under:-

> “12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent

> perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

24. Considering the aforesaid law on the subject and looking to the facts and circumstances of the case, this Court finds that the finding of acquittal recorded by the learned trial Court is neither perverse, nor illegal. The findings recorded by the learned Trial Court do not suffer from any patent illegality, misappreciation of evidence, or manifest error of law warranting appellate Court interference. Consequently, the order acquitting the respondent No.2 of the charges levelled against him is fully justified and calls for no interference by this Court in exercise of its appellate jurisdiction.

25. In view of the foregoing discussion, this Court finds no merit in the appeal. Accordingly, the appeal is dismissed.

Sd/-	Sd/-
(Narendra Kumar Vyas)	**(Sudhir Kumar)**
JUDGE	**JUDGE**

Deshmukh