



(2)

Single Bench (General)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.  
CR. APPEAL NO. 479 OF 1990.

Loknath son of Javara Gond,  
aged 22 years, resident of  
Molimuda, Distt. Raipur, MP

.. APPELLANT  
(IN JAIL)

VS.

THE STATE OF M.P.

... RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL  
PROCEDURE CODE.

CONVICTION:

SENTENCE,

U/s 376 IPC.

.. R.I. for 7 years.

..

..

8-5-90  
M. Patel  
Rm  
8-5-90

HIGH COURT OF CHHATTISGARH AT BILASPUR.Criminal Appeal No.479/1990.

Loknath ... Appellant.

vs.

State of Madhya Pradesh.

(Now Chhattisgarh).... Respondent.

\* \* \* \* \*

J u d g m e n t

(26 - 07- 2001)

Hon.Shri R.S.Garg, J. :

The appellant being aggrieved, by the judgment dated 23-4-1990, passed in Sessions by the learned 1st A.S.J., Mahasamund, trial No.236/88/ convicting the appellant under Section 376 I.P.C. and sentencing him to undergo R.I. for 7 years, has filed this appeal.

2). The prosecution case as emerges out of F.I.R. (Ex.P/2) dated 24.5.1988, lodged by P.W.2 Kusumbai is that the present appellant was working as an agricultural labour in the fields of her husband (P.W.3-Jhadiram); ~~at~~ about 14-15 days before the lodgement of the report after the prosecutrix and the accused had completed part of the work, the accused fell her on the ground and committed rape. When the prosecutrix wanted to raise alarms, the accused armed with spade threatened her of dire consequences, therefore, she could not call the others to help her.

32

- 2 -

Regarding the delay in lodging the report, she stated in the F.I.R. that because of the fear of reputation (tarnishing of reputation) the report was not lodged. After receiving the report the police agency came into action, sent the prosecutrix for her medical examination and prepared certain panchanamas and recorded the statements of the witnesses. The challan was filed against the accused, but as he abjured the guilt, he was put to trial. After recording the evidence and hearing the parties, the learned trial Court convicted and sentenced the accused as referred to above.

3). Shri M.D.Dhote, learned counsel for the appellant after taking me through the contents of Ex.P/2, statements of P.W.2 Kusumbai, statements of P.W.3 Jhadiram and statements of P.W.10 R.B.S. Parihar, submitted that the explanation relating to the delay in submission of the report was contrary to the evidence available on record; as the explanation is not justifiable it would be un-safe to rely upon the statements of the prosecutrix Kusumbai (P.W.2) and her husband Jhadiram (P.W.3). He further submits that from the records it would clearly appear that the appellant was to re-pay certain cash and paddy to the complainant-side, but as the same was not paid back, a false report was lodged. He submits that the appellant is entitled to acquittal.

4). Shri P.Bharat, learned counsel for the

- 3 -

State on the other hand submits that the delay has been properly explained and it is not un-heard that people do not lodge the report in such matters for few days because they are always afraid of the consequences which may emerge out of such report. He also submits that non-description of fine details in F.I.R. or in the statements of the witnesses recorded under Section 161 Cr.P.C. would not adversely affect the prosecution case. He prays for dismissal of the appeal.

5). From the first information report(Ex.P/2), it would appear that the prosecutrix lodged the report on 24.5.88 alleging that about 14-15 days before the date of the report, the accused committed rape upon her. According to her, she came to her house and narrated the incident to her husband, who in his turn gave the information to elderly persons of the village. She also stated that because of the fear of tarnishment of image, the report was not immediately lodged. When she was examined in the Court as P.W.2, she stated in the Court that the accused committed rape upon her. In the cross-examination, in paragraph 17 she was asked a pointed question that why she did not lodge the report for 15 days, she answered that in the village panchayat the accused Lokanth stated that he had tarnished the character of the prosecutrix, therefore, he would not work with the prosecutrix and her husband, therefore, she had lodged the report. She further stated

- 4 -

that if the accused did not make such a statement in the village Panchayat, she would not have lodged the report. In reply to the question that if the accused had continued to work with the prosecutrix, she would not have convened panchayat meeting; she answered that if the accused continued to work with them she ~~would~~ not have convened the village panchayat. The explanation tendered by her that as the accused narrated about the rape in the village panchayat, therefore, she lodged the report appears to be contrary to the statements of P.W.4 Kisun, P.W.5 Chandralal and P.W.6 Tekchand.

6). According to P.W.4 Kisun, on the date of incident itself he was informed by Jhadiram (P.W.3) that the accused made sexual assault on his wife. Similar is the statement of P.W.5 Chandralal. P.W.6 Tekchand had stated before the Court that the panchayat meeting was convened by Jhadiram(P.W.3) ~~and~~ in presence of the village people, accused Loknath and his brother Salikram. Jhadiram(P.W.3) had informed all the concerned that the accused committed rape upon P.W.2 Kusumbai. On one side, the prosecutrix-P.W.2-Kusumbai says that the accused made the statement in the panchayat that he had committed rape, therefore, she lodged the report, but from the statements of P.W.6 Tekchand it would appear that the husband of the prosecutrix made this statement. From the statements of P.W.4 Kisun and

P.W.5 Chandralal, it would clearly appear that on the date of incident Jhadiram-husband of the prosecutrix narrated the incident not only to them, but to number of persons. If the husband of the prosecutrix was making<sup>As</sup> the incident public by narrating the same to the number of persons, then, the cat had already come out of the bag and number of villagers knew about the incident. If the husband of the prosecutrix was making the incident known to all concerned, then, explanation given by her that she was afraid of a dent to ~~of~~ her reputation, would appear to be cooked-up defence. From the statement of P.W.2 Kusumbai in paragraph 19 of the statement, it would further appear that about 3/4 months prior to the date of incident, the accused had taken some loan from the prosecutrix and her husband and as despite panchayat the accused was not ready and willing to return back the money and articles, a report was lodged.

7). P.W.3 Jhadiram- husband of the prosecutrix had clearly stated that at about 12.00 noon ~~on~~<sup>As</sup> the date of incident, he was informed by his wife that the accused had committed rape upon her. Immediately after receiving the information he informed Kisun, Tukel and Chandralal. The explanation coming forward from the prosecution that the report was not lodged because of the fear of tarnishment of image would suffer a dent in view of the conduct exhibited by the prosecutrix's husband. <sup>As</sup>

- 6 -

On one side they were not ready to lodge the report, but at the same time the husband was making the things public. According to P.W.3 Jhadiram, one Salikram, brother of the accused came to his house and made a request to him that the report be not lodged and the accused be exempted. The witness further says that he thought that the thing would not be made public, therefore, he did not lodge the report.

8). It is to be seen from the statement of Jhadiram(P.W.3) that much before the alleged arrival of Salikram and the accused he had already made the information public. He had further stated that the complainant side was to recover certain amount and paddy from the accused, but the accused refused to pay the amount, on this Salikram agreed to pay the amount and paddy, but in panchayat, Loknath and Salikram refused to make the payment, therefore, they were forced to lodge the report.

9). In paragraph 6 when the explanation about the delay was sought, Jhadiram(P.W.3) said that had he gone to lodge the report agricultural labour would not have come to his fields. In the opinion of this Court, such an explanation is palpably false. From the records it would appear that the husband of the prosecutrix was ready to inform about the incident to all concerned and was also ready to narrate entire incident in the village panchayat, <sup>but he</sup> neither the prosecutrix nor her husband were ready to lodge the report. One

could understand the said explanation if the incident was not narrated by P.W.3 Jhadiram to any-body. The prosecution witnesses say that they were afraid of a dent to their reputation and this dent could be given to their reputation by the villagers, therefore, they did not lodge the report, but at the same time the villagers knew about the fact. If that was so there was no good cause for not lodging the report right in time. From the statements of the witnesses it would also appear that the accused did not pay back the money or return the paddy to the complainant and refused to make the payment in the panchayat, therefore, the report was lodged.

10). Taking into consideration the statements of the witnesses, conduct of P.W.2 Kusum bai and P.W.3 Jhadiram, I hold that it would not be safe to rely upon their statements for recording conviction of the appellant.

11). After going through the entire records, I am unable to hold that the prosecution could prove its case beyond doubt or to such a reasonable certainty where but for convicting the accused no other view is possible. The findings recorded by the Court below deserve to and are accordingly set aside. The accused/appellant is acquitted of all the charges. The appellant is on bail. His bail bonds are discharged.

12). The appeal is allowed.

Sd/-  
R.S. Garg  
Judge

26-07-2001.