

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 575 of 2012**

**Judgment reserved on 23.9.2016**

**Judgment delivered on 30.9.2016**

1. Vinod Kumar alias Vinod Kumar Satnami, aged about 40 years, S/o Sukhi Ram Satnami, R/o Village Janglor, Police Station Pallari, District Raipur (Now Baloda Bazar - Bhatapara) CG

**---- Appellant**

**Versus**

1. State Of Chhattisgarh Through : SHO Police Station Pallari, District Raipur (Now Baloda Bazar - Bhatapara) CG

**---- Respondent**

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For Appellant	-	Shri Hemant Gupta, Advocate.
For Respondent.	-	Shri Adil Minhaj, PL

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**Hon'ble Shri Justice Pritinker Diwaker**

**CAV JUDGMENT**

**30/09/2016**

This appeal is directed against the judgment and order dated 4.7.2012 passed by Additional Sessions Judge Baloda Bazar in Sessions Trial No. 146/2011 convicting the accused/appellant under Sections 366, 342 and 376 (2) (e) IPC and sentencing him to undergo RI for five years with fine of Rs. 300/- u/s 366, RI for one year with fine of Rs. 200/- u/s 342 and RI for ten years with fine of Rs. 500/- u/s 376 (2) (e) IPC, plus default stipulations.

2. Facts of the case in brief are that on 15.1.2011 FIR (Ex.P-1) was lodged by the prosecutrix - a married and pregnant lady aged about 19 years alleging therein that on 14.1.2011 at about 2 PM when she had gone to police station to lodge report against her husband she felt hungry and while she was going to her sister's house at village Janglore to have food, at about 3 PM near a canal falling on the way accused/appellant met her and on the point of knife he took her inside his house and made her captive. In the night hours showing knife he is alleged to have threatened her of life, made her lie on the cot and committed forcible sexual intercourse with her thrice. It is alleged that in the next morning when the accused/appellant went out to answer the call of nature, his wife opened the door and asked her (prosecutrix) to get away. Thereupon, she went to the house of her sister Chaiti Bai at village Janglore and narrated the entire incident to her as also to her mother-in-law Basant Bai and then the report came to be lodged. It is further alleged by the prosecutrix that at the relevant time she was carrying nine months pregnancy. Based on this FIR, offences under Sections 366, 342, 506-B and 376 IPC were registered against the accused/appellant. She was medically examined by Dr. Pushpa Sontake (PW-11) on 15.1.2011 itself who gave her report Ex. P-18 (to be discussed later). After completion of investigation, charge sheet was filed by the police for the offences punishable under Sections 366 342, 506-B and 376 (2) (e) IPC followed by framing of charge by the Court accordingly.

3. So as to hold the accused/appellant guilty, prosecution has examined 11 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court acquitted the accused/appellant of the charge under Section 506-B but has convicted and sentenced him as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that present is a case of false implication as after being thrown away by one Nandu whom she claims to be her husband she made an attempt to live in the house of the accused/appellant but when he too did not allow her to do so, she chose to lodge a false report against him. He submits that from the record it does not appear that she made any effort to come out of the clutches of the accused while being taken away by him to his house. According to the counsel for the appellant, the story put forth by the prosecutrix that she was subjected to rape by the accused/appellant in presence of his wife in the house appears to be highly improbable. Lastly, it is submitted that if this Court is not inclined to interfere with conviction part of the impugned judgment, at least the sentence may be reduced to imprisonment for seven years from that of ten years imposed by the trial Court.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Sections 366, 342 and 376 (2) (e) IPC are strictly in accordance with law and there is no infirmity in the same. He submits that from very beginning the prosecutrix remained firm in her stand of being dragged by the accused to his house and subjected to rape for the whole night, and further that the medical evidence also shows recent sexual intercourse with her and therefore the conclusion of guilt drawn by the Court below is fully justified.

7. Heard counsel for the parties and perused the evidence on record.

8. Prosecutrix (PW-1) has stated in her evidence that on the date of incident after being beaten and driven out of the house by Nandu she had gone to police station Palari for lodging the report against him and at that time she was carrying pregnancy of nine months. According to this witness, feeling hungry in the police station, while she was going to her sister's house at village Janglore, near a canal accused/appellant caught hold of her hair, dragged her to his house and made captive therein. At that time after hearing the voice of some woman she asked her to inform her sister living in the same village about her being made captive by the accused/appellant. She has stated that in the morning when the accused/appellant went

out, his wife whose name was not known to her, asked her to get away. She has further stated that after detaining in his house, the accused/appellant committed forcible sexual intercourse with her for the whole night. On the next morning, after being driven out by the wife of the accused/appellant she went to the house of her sister and narrated the entire incident to her. Thereafter, she along with mother-in-law of her sister, went to the Sarpanch and *Panchayat* meeting was called where a decision to lodge the report was taken. She gave consent for medical examination vide Ex. P-2, spot maps were prepared by the police and *Patwari* vide Ex. P-3 and P-4 respectively and her petticoat was seized vide Ex. P-5. She has stated that though she was not married to Nandu but she got pregnant through him and for that only he kept her unwillingly on being asked by the villagers. Nandu, however, is stated to have told her that the child in her womb was not through him and that she had physical relations with number of persons. According to the prosecutrix, the road on which she was walking is not open to plying of big vehicles but on the road in the other side of the canal big vehicles do ply. She however has stated that the road she was moving on was open to pedestrians. According to this witness, she came to know the accused/appellant only after the incident and he was not known to her prior thereto. She has stated that when the accused/appellant took her to his house, nobody was there. She has denied that wife of the accused/appellant had given her food to eat or was there any conversation between the two. According to her, for the first

time she saw the wife of the accused/appellant in the morning when she asked her to get away. She has further stated that the name of woman refining rice in the house of the accused/appellant is Dukhia Bai which she came to know through her sister and that she had informed her of being forcibly brought by him. According to her, when in the night the accused/appellant came to her, she had raised her cries and at that time his wife was also in the house. She has stated that at the time of incident she was wearing sari, blouse and petticoat but the same remained intact and likewise she did not suffer any injury on her body. She is denied to have co-operated the accused/appellant for having sexual intercourse with her. According to her, she tried to resist the act of the accused/appellant but her physical condition did not permit her to do so. She has admitted that because of her habits her parents abandoned her and even Nandu did not want to keep her. Likewise, according to the prosecutrix, her sister and brother-in-law also did not accommodate her beyond 5-7 days. She has denied that she was ready for compromise or that she ever demanded Rs. 50,000/- from the brother of the accused/appellant. She has stated that while lodging the report, she informed the police that at the time when accused/appellant brought her to his house, one woman was there whom she asked to inform her sister about her captivity by the accused/appellant but if it is not written therein, she could not tell the reason for that. Dulia Bai (PW-2) is the witness who according to the prosecutrix was in the house of the

accused whom she asked to inform her sister about her being made captive by the accused/appellant. She however has stated that the prosecutrix had come to the house of the accused/appellant alone and at that time his wife was also there. She has stated that the prosecutrix was given water by the wife of the accused. She has stated that in front of the house of the accused/appellant main road is there which is always open to vehicular and pedestrian movement. Leela Bai (PW-4) is the wife of the accused/appellant who has stated that on the date of incident one woman had come to her house but after taking water she got back and no incident as has been alleged by her has taken place. In cross-examination she has stated the said woman was pregnant and she had given her food to eat. She however has denied commission of rape on her by her husband saying that once she she was not in her house, how such incident could have taken place. She has also denied the ouster of the prosecutrix on the next day by her when in the morning her husband had gone out to answer the call of nature. Chaiti Bai (PW-5) – the sister of the prosecutrix has stated that the prosecutrix had come to her house at 6 AM with her hair disheveled and informed commission of sexual intercourse by the accused/appellant in his house. Prosecutrix is also stated to have informed this witness about the presence of wife of the accused and one Dulia Bai (PW-2) when she was made captive by the accused/appellant in his house. According to this witness, she had informed the police that on account of dispute with her husband the prosecutrix was coming to her house and that at

the relevant time wife of the accused Leela Bai (PW-4) and Dulia Bai (PW-2) were also present in the house of the accused but if it is not recorded therein, she could not tell the reason for that. Basant Bai (PW-6) – mother-in-law of Chait Bai (PW-5) has made almost similar statement as Chaiti Bai (PW-5). According to this witness, prosecutrix had informed her that at the relevant time the wife of the accused/appellant was also there who on the next day drove her away. Bhuneshwar Prasad Sahu (PW-7) is the witness who prepared spot map Ex,P-4. Dr. B.S. Dhruv (PW-8) is the witness who medically examined the accused/appellant and gave his report Ex. P-8 stating that he was capable of performing sexual intercourse. M.S. Kanwar (PW-9) is the investigating officer who has duly supported the case of the prosecution. Kishanlal (PW-10) - the witness to seizure has not supported the case of prosecution and has been declared hostile. Dr. Pushpa Sonteki (PW-11) is the witness who medically examined the prosecutrix and gave her report Ex. P-18 opining commission of recent intercourse with her. According to this witness, prosecutrix was carrying nine months pregnancy, her age at the relevant time was about 19 years, her breast, pubic hair and axillary hair were fully developed, her hymen was ruptured and two fingers easily entered her vagina. According to her, vaginal slides prepared by her were handed over the constable for being sent to Laboratory for chemical examination.



9. Now to examine the veracity of the version of the prosecutrix it becomes necessary for this Court to closely go through the evidence of all the important witnesses. According to the prosecutrix, while being taken by the accused to his house at 3 PM, she did not come across anyone on the way whereas Dulia Bai (PW-2) and the investigating officer (PW-9) have stated in their statements that the said road is always open to vehicular and pedestrian movement. Secondly, according to the prosecutrix, when the accused/appellant took her to his house, nobody was there and for the first time she saw his wife in the next morning when she asked her to get away after the accused/appellant went out to answer the call of nature whereas according to Dulia Bai (PW-2) the prosecutrix had come to the house of the accused alone and at that time his wife Leela Bai (PW-4) was also there and had given water to her. Even Leela Bai has stated in her evidence that after taking water the prosecutrix went away and when she did not stay in her house in the night, question of her being raped by her husband does not arise. Likewise, sister of the prosecutrix (PW-5) has also stated that when in morning the prosecutrix came to her house, she had informed that at the time of her captivity by the accused/appellant, his wife and Dulia Bai were also present in the house. Basant Bai (PW-6) has also stated in the same tune. Thus the evidence of the prosecutrix that at the relevant time nobody else was there in the house of the accused/appellant and she saw his wife for the first time in the morning, does not appear to be correct. Further, according to

the case of prosecution itself the house of the accused/appellant has three rooms only as is clear from spot map Ex. P-4 and therefore the statement of the prosecutrix that in such a small house that too in presence of the wife of the accused/appellant she was subjected to rape by him in the night that too thrice does not appear convincing. Furthermore, it is not the case of prosecution that the accused/appellant had gagged her mouth during her captivity in his house, and being so she had all opportunity to raise cry as loudly as possible to attract the attention of outsiders but she does not appear to have done all that. Even assuming for a moment that the allegation of the prosecutrix has some substance but the medical evidence reveals that there was no injury on her body suggesting any resistance or protest of any sort made by her while being subjected to rape. Rather, she herself has stated in her evidence that at the relevant time she did not scratch or kick back the accused when he was having sex with her. No doubt that after carrying nine months pregnancy active resistance to his act would not have been possible for her but at least she could have bitten, scratched or shouted loudly to draw the attention of the inmates of the house but nothing of this sort also has been done by her, and all that reeks of tacit consent on her part. Another important aspect of the case is that though the petticoat having sperm-like stains was seized by the prosecution, in the absence of FSL and serological report, such seizure is of no help to the case of prosecution.

10. Thus the prosecution had not been in a position to prove its case beyond all reasonable doubts or collected any cogent and clinching evidence on the basis of which the guilt of the accused under any of the aforesaid sections could be established. This being the position, makes the accused/appellant entitled to receive the benefit of doubt. Findings of the Court below, therefore, being not based on proper appreciation of the evidence are liable to be set aside.

11. In the result, the appeal is allowed, judgment impugned is set aside and the accused/appellant is acquitted of the charges levelled against him. As the appellant is in jail, he be set free forthwith if not required in any other case.

Sd/-

**(Pritinker Diwaker)**

**Judge**

Jyotishi

