

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 557 of 2005

1. Tijuram Yadav S/o Kanhaiya Lal, Aged about 55 years, Occupation - Labourer, R/o Potiyadih, P.S. Arjuni, District Dhamtari, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through District Magistrate, Dhamtari, Chhattisgarh

Matter arising out of P.S. Arjuni, District Dhamtari, Chhattisgarh

---- Respondent

For Appellant :- Shri Tarun Dadsena, Advocate.
For Respondent :- Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

13/07/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 05-05-2005 passed by the Additional Sessions Judge, Dhamtari, the then Sessions Division Raipur, C.G. in Sessions Trial No.315/2004 whereby & whereunder the learned trial Judge after holding the appellant guilty for committing rape with the prosecutrix (PW-4) (name not mentioned) convicted him under Section 376(1) of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced the appellant to undergo rigorous imprisonment for 7 years and to pay fine of Rs.200/-, in default of payment of fine, to further undergo rigorous imprisonment for 1 month.

2. The conviction is impugned on the ground that without their being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforesaid mentioned and thereby committed illegality.

3. As per case of prosecution, on 08-08-2004 at about 6.00 p.m. when the prosecutrix (PW-4), a married woman residing with her parents, was all alone in home the appellant came and took the prosecutrix (PW-4) inside the house and after removing her clothes committed forceful sexual intercourse and threatened her to not to say anything for the incident to anyone. Thereafter, when the mother of the prosecutrix came, she informed her the entire incident. On 09-08-2004, the prosecutrix (PW-4) reached to Police Station Arjuni and lodged First Information Report (Ex.-P/5). Arjuni police registered the crime No.213/04 against the appellant and thereafter the prosecutrix (PW-4) was sent for medical examination after necessary consent by the father of the prosecutrix. Doctor Asha Tripathi (PW-12) examined the prosecutrix (PW-4) and noticed no any injury over body and private part in her medical report, Ex.-P/3. She opined that there is no any positive sign of rape as she was a married lady. Doctor also prepared slides from vaginal swab, duly sealed and handed it over to concerned Constable for chemical analysis. The statement of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code'). Spot map was prepared. The accused/appellant was arrested. He was sent for medical examination. Doctor R.H.Mishra(PW-14) after examination gave report Ex.-P/10A wherein he opined that the accused/appellant was capable of committing intercourse.

4. After due investigation, charge sheet was filed before the Chief Judicial Magistrate, Dhamtari, who, in turn, committed the case to the Court of Sessions. Learned Additional Sessions Judge, Dhamtari, received the case on transfer and conducted the trial. The accused/appellant was charged for the offence under Section 376(1) of the IPC and denied for the charges.

5. In order to prove guilt of the accused/appellant, prosecution adduced 14 witnesses in all. Statement of the accused/appellant was also recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After affording opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial court.

8. Learned counsel for the appellant vehemently submitted that prosecution failed to prove that the appellant forceably committed rape to the prosecutrix (PW-4). This was a case of consent looking to the entire facts surfaced in the cross-examination of the prosecutrix (PW-4). In alternate, learned counsel for the appellant would submit that as the incident is of 08-08-2004; the accused/appellant remained in custody from 10-08-2004 till 05-03-2007, i.e. for about 2 years, 6 months and 28 days and also with the order of this Court the accused/appellant was arrested on 14-04-2016 and he is in jail till today thereby further remained in jail for 2 months 29 days, with this, total period of sentence already served by the appellant reaches upto 2 years, 9 months and 27 days; he is the first offender, aged about 55 years at the time of incident; the incident happened about 12 years ago; the accused/appellant is presently aged about 67 years and looking to the entire conduct, no any medical corroboration and other facts and also as per proviso as provided in Section 376(1), prior to the present amendment incorporated w.e.f. 03-02-2013, the Court may for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than 7 years; thus, looking to the entire facts, if at all the Court affirms judgment of conviction, then he may be considered for the sentence already undergone as he was labour at the relevant point of time, a

illiterate person, presently he hardly earns his bread, he had already deposited the fine amount. Hence, he may be sentenced accordingly.

9. Per contra, learned counsel for the State/respondent opposed the argument advanced on behalf of the appellant and would submit that there is no any inordinate delay for lodging the First Information Report; looking to the then circumstances, the prosecutrix (PW-4) was not in a position to call for help but, when asked she stated the incident to her mother and very next day she lodged the First Information Report. She remained firm in the cross-examination. She does not appear to be a consenting party. The trial Court after due appreciation awarded the minimum sentence. The judgment of conviction and order of sentence passed against the appellant by the trial Court are well founded and as such they require no interference.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced on behalf of the prosecution during the trial.

11. As there is no any eye-witness, the statement of the prosecutrix (PW-4) has to be appreciated with caution. Admittedly, the prosecutrix was a married woman and on account of dispute with her husband she was living with her parents. True, she had not made any hue and cry, but for the same she offered explanation which seems to be reasonable. As she was a married woman, it is not rule of thumb that the medical corroboration is required. Immediately, after the incident when her mother asked on some suspicion after seeing slipper lying outside the house, she narrated the entire story to her mother and thereafter lodged the First Information Report, it goes to show that she was not a consenting party. After perusal of entire evidence, in the considered view of this Court, the trial Court rightly held that the prosecutrix (PW-4) was not a consenting party and after relying her statement regarding forceful sexual intercourse convicted the accused/appellant for the offence which requires no interference. Hence, conviction of the appellant under Section 376(1) of the IPC is hereby affirmed.

Also the fine sentence awarded to the appellant is Rs.200/- only, it cannot be said that the said fine sentence is on the higher side. Consequently, the fine sentence awarded also does not require any interference.

12. So far as quantum of sentence is concerned, proviso prevailing at the time of incident gives power to the Court to impose sentence for a term lesser than 7 years for adequate and special reasons to be recorded. In the present case, the incident is about 12 years old; the accused/appellant is the first offender; he was distantly related with the prosecutrix; he is labour by profession and was aged about 55 years at the time of incident, with this he is presently a old aged person of about 67 years; also the accused/appellant is being represented with the help of High Court Legal Aid Services Committee as he is not in a position to engage any outside counsel to defend him, upon considering the other circumstances and facts surfaced during the cross-examination, also absence of any other mark of internal and external injury though not required by law and looking to the entire facts and circumstances, this Court is of the view that the period already served by the appellant/accused for 2 years, 9 months and 27 days would meet the ends of justice.

13. Consequently, the appeal filed on behalf of the appellant is partly allowed. Conviction of the appellant under Section 376 (1) of the IPC and also fine sentence awarded by the trial Court are hereby affirmed. However, the jail sentence awarded to the accused/appellant is hereby modified and instead of rigorous imprisonment of 7 years, the appellant is sentenced to the period already undergone by him. The appellant is reported to be detained in jail under the warrant of arrest issued by this Court dated 29-03-2016. The authorities are directed to release him forthwith if not required in any other case.

14. Copy of this judgment may be filed on behalf of the accused/appellant before the authorities, i.e., the trial Court who shall immediately order for release of the accused/appellant from the jail.

15. Registrar (Judicial) is also directed to send copy of the judgment to the trial Court/concerned jail authorities through usual mode and fax mode immediately.
16. Appeal partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
J U D G E

Aadil