

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 50 of 2009

1. Chandraprakash @ Chandru S/o Khumnu Sahu Aged About 27 Years
R/o Village Bhuliya, Police Station Gurur, District Durg Chhattisgarh.

**---- Appellant
(In Jail)**

Versus

1. State Of Chhattisgarh Through P.S. Gurur, Distt.-Durg (Cg)

---- Respondent

For Appellant:
For Respondent

Shri Aman Kesharwani, Advocate
Shri Vivek Sharma, Government Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

28/03/2016

1. This appeal is directed against the impugned judgment dated 31.12.2008 passed by the Additional Sessions Judge, Balod in S.T. No.40/08 convicting accused/appellant for the offence punishable under Section 341, 506 (2) & 376 (1) of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo simple imprisonment for 1 month; rigorous imprisonment for 1 year & rigorous imprisonment for 10 years and fine of Rs.5,000/-, in default to undergo additional R.I. for 1 year respectively.
2. Case of the prosecution in brief is that on 10.8.2008 at about 10.00 a.m. when the prosecutrix, aged about 70 years, was returning to her house after answering the call of nature, the accused/appellant caught hold of her, took her near the adjacent place on the knife point, threw her on the field and committed forcible sexual intercourse with her. After the incident the prosecutrix returned village and narrated the entire incident to Shyamrao (PW-2), Bisahu Das (PW-3) & Dhanesh Ram (PW-4). On

the same day at 2.30 p.m., FIR (Ex.P-1) was lodged by the prosecutrix based on which offence under Sections 341, 506 (2) & 376 of the IPC was registered against the accused/appellant. The prosecutrix was sent for medical examination which was done by Dr. (Smt.) Shashi Claudius on 10.8.2008 vide Ex.P-11 who noticed injuries on the breast & private part of the prosecutrix. Accused was also medically examined by Dr. G.R. Rawte (PW-8) who gave his report of Ex.P-12 opining him to be fully capable of having sexual intercourse. Steel knife was seized from the possession of the appellant vide Ex.P-7.

3. After completion of investigation, challan was filed against the accused/appellant and accordingly the charges were framed against him by the trial Court. The prosecution in order to bring home the charges levelled against accused/appellants examined 09 witnesses in all. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured the guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted & sentenced the accused/appellant as described above.
5. Counsel for the appellant submits that present is a case of false implication otherwise it is literally impossible that a young man of 27 years would commit sexual intercourse with an old lady aged about 70 years. He further submits that on account of previous animosity, the prosecutrix has falsely implicated the appellant. He further submits that there are material contradictions and omissions in the statement of the prosecution witnesses. Lastly, he submits that the incident has taken place about six years back and since then the appellant is in jail,

therefore, the sentence imposed on him under Section 376 of IPC may be reduced to RI for 7 years which is the minimum sentenced provided under Section 376 of IPC.

6. On the other hand, counsel for the State supports the impugned judgment and submits that the impugned judgment is in accordance with law and there is no infirmity in the same. He further submits that present is a case where the prosecutrix, aged about 70 years, has been ravished simply because there was no one to help her and the act of the appellant is as such where no leniency can be shown to him. He also submits that very prompt report (Ex.P-1) has been lodged by the prosecutrix and medical evidence also supports the prosecution case and thus there is no room for this Court to acquit the appellant.
7. I have heard learned counsel for the parties and perused the material available on record.
8. The prosecutrix (PW-1) has stated in her evidence that on the date of incident at about 10.00 a.m. when she was returning from the forest after attending the call of nature, the accused/appellant came from her back, caught hold of her and took her on knife point and being asked by the prosecutrix, he told that he will have sex with her. She requested him not to spoil her image at this age, but he did not pay any heed to her request and forcibly took her towards the forest, threw her on the field and committed forcible sexual intercourse with her after removing her clothes. The accused had asked her to come again at 4.00 p.m. and threatened her also for dire consequences in the event of disclosing the incident to anyone. She has further stated that while she was narrating the entire incident to Dhanesh (PW-4), her son Shyamlal & one Ramesh came there and she disclosed the incident to them also. Thereafter they

went in that direction to search accused/appellant and after some time came back with one boy to whom she has identified as the person who committed rape with her. She has further stated that she had lodged the report of incident in the police station and thereafter she was sent for medical examination. In her cross-examination the prosecutrix stood firm and has not stated any such thing which may help the accused/appellant.

9. Shyamrao (PW-2) is the son of prosecutrix. While supporting the prosecution case he has stated that when he was returning from the village pond, he met the prosecutrix near the shop of Dhanesh where she informed him that she has been raped by the accused. Thereafter he along with Dhanesh & Ramesh went towards that direction in search of accused, but could not trace him. Seeing the accused coming from the side of forest, they brought him before the prosecutrix who identified him as the boy who committed rape with her.
10. Bisahu Das (PW-3) is the witness of seizure memo Ex.P-3, Ex.P-6 & Ex.P-7 by which the clothing of the prosecutrix, underwear of accused/appellant and knife were seized respectively.
11. Dhanesh (PW-4) is the villager who has duly supported the statement of the prosecutrix and stated that the prosecutrix has informed him that she has been subjected to rape by the accused/appellant.
12. Ramesh Kumar (PW-5) has also supported the case of the prosecution by saying that on the date of incident when he was at the shop of Dhanesh Sahu, the prosecutrix came there and has informed that she has been subjected to rape by the accused/appellant.
13. Dr. (Smt.) Shashi Claudius (PW-6) is the witness who medically examined the prosecutrix vide Ex.P-11 and noticed following injuries;-
 - Contusion of 2cm x2cm on the left breast;
 - lacerated wound of ½cm x 2cm x 2cm on vagina at 6° clock

position , blood was coming from it.

- Lacerated wound of ½ x 2 x 2 cm on vagina at 8° clock position and blood was coming out.
- Labia minor was swollen red and complaining pain on touch.

As per her opinion, injuries on the sexual parts are probably occur during sexual intercourse within 12 hours.

14. Fagwaram Sahu (PW-7) is the Patwari who prepared the spot map vide Ex.P-5.
15. Dr. G.R. Rawate (PW-8) is the person who medically examined the accused/appellant vide Ex.P-13 and according to this witness, the accused/appellant was capable of performing sexual intercourse. He has further stated that in the sealed packet one underwear was brought before him in which he found stains like semen.
16. N.K. Rajak (PW-13) is the investigating officer who has duly proved the prosecution case.
17. Minute scrutiny of the evidence as adduced by the witnesses makes it clear that on 10.8.2008 the prosecutrix was subjected to rape by the accused/appellant and a very prompt report was lodged by the prosecutrix i.e. just after four hours of the incident, and that there is no evidence to disbelieve the statement of the prosecutrix as to why she has falsely implicated the accused/appellant. Her statement has been duly supported by Shyamrao (PW-2), Bisahu Das (PW-3) & Dhanesh Ram (PW-4) who have categorically stated that on the date of incident the prosecutrix informed them that she has been subjected to rape by accused/ appellant. Statement of prosecutrix gets further corroboration from the medical evidence, according to which labia minor was swollen and on touch, the prosecutrix was complaining pain, one contusion on the breast and two lacerated wounds found on her private part could

occur during intercourse. Thus, the evidence of the prosecutrix being completely trustworthy inspires full confidence and nothing has been brought on record by the defence to discredit or discard the same. Accordingly, the conviction under Section 376 (1) IPC being based on correct appreciation of the evidence adduced by the prosecution is worth sustenance and according it is hereby affirmed.

18. As regards conviction under Sections 341 & 506 (2) of IPC, the essential ingredients of the offence of wrongful restraint and criminal intimidation are the obstruction to prevent any person from proceeding in any direction and threat to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do. According to the prosecutrix, when she was returning home after answering the call of nature, the accused met her on the way, caught hold of her, took her on knife point inside the forest and committed forcible sexual intercourse with her. She has further stated that after committing the offence, he threatened her of life if she disclosed the incident to anyone. Thus, the essential ingredients for attraction of offence under the aforesaid sections stand proved beyond any doubt and therefore the conviction of appellant under the aforesaid sections being in conformity with the un-rebutted evidence of the prosecutrix cannot be faulted with.

19. The appeal thus has no substance at all and accordingly it meets the fate of dismissal. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-

(Pritinker Diwaker)
Judge

roshan