

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.106 of 2012**

Sulu Musalman son of Khalid Musalman, aged about 20 years, occupation Labourer, resident of village Sai Tangartoli, Police Station, Jashpur, District Jashpur (CG).

---- Appellant

Versus

State of Chhattisgarh, through the Police Station, Jashpur, District Jashpur (CG).

---- Respondent

For Appellant
For respondent/State

Shri V.K. Pandey, Advocate.
Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

30/11/2016

1. The appellant in the instant case stands convicted for the offence under Section 376(1) IPC and have been sentenced to undergo RI for 10 years with fine of Rs.1000/- with default stipulation vide judgment dated 15.12.2011 passed by the Sessions Judge, Jashpur, in Sessions Trial No.36/2011.
2. The case of the prosecution in brief is that, the prosecutrix, PW-2, on 03.09.2006 when she had gone to the field for answering the nature's call at around 6:00 pm in the evening, the present appellant reached there and finding the prosecutrix alone, overpowered and ravished her. She immediately rushed back to the home and narrated the incident to her mother and father and since it had become dark, the prosecutrix and the other members went to the police chowky, Lodam under Police

Station, Jashpur on the very next day i.e. 04.09.2006 at around 10:55 am and lodged an FIR (Ex. P/5).

3. Based on the investigation, the case was registered against the appellant and he was subjected to trial before the court below for the offence under Section 376(1) IPC.
4. The prosecution, in all, has examined as many as 6 witnesses. There was no witness examined on behalf of the defence.
5. The trial court finally found the appellant to be guilty of having committed an offence under Section 376 (1) IPC and sentenced him for the period as enumerated in the first paragraph of this judgment leading to filing of this appeal.
6. Learned counsel appearing for the appellant assailing the judgment submits that the entire judgment of court below is totally bad in law for the reason that the court below has not appreciated the evidence in its proper perspective. It is a case where the the appellant has been falsely implicated in the case and that the prosecution has not been able to establish its case beyond reasonable doubt. It is also contended that the case of the prosecution is highly improbable as at the time of incident occurred, there does not seem to have been any resistance provided by the prosecutrix, nor is there any evidence to show that the prosecutrix at the relevant point of time had raised an alarm seeking for help.
7. Counsel for the appellant also submitted that it is a case where the present appellant has been falsely been implicated in the case for the

reason that on an earlier occasion, the appellant had refused to marry the prosecutrix. According to appellant, it is a case where the two families knew each other as they were of the same village and that he (appellant) was initially having a love affair with the prosecutrix and when the appellant later on refused to marry the prosecutrix, they decided to teach him a lesson and thereby has lodged a false complaint against the appellant. Thus, the story of the prosecution becomes highly improbable and prays for quashing of impugned judgment of conviction and also sought for acquittal of the appellant from the charge levelled against him.

8. Learned counsel appearing for the State however opposing the appeal submitted that it is a case where in fact the case of the prosecution stands duly proved and established by the prosecution by leading convincing evidence before the court below. According to him, there is no lapse whatsoever on the part of the prosecution in proving the case before the trial court. According to State, the prosecution infact has led cogent evidence to establish the offence of rape against the appellant. According to him, there is sufficient corroboration as well as medical evidence which has been adduced by the prosecution to establish the charge beyond reasonable doubts against the present appellant. State counsel took the court through the statement of prosecutrix, PW-2, where she has narrated the entire incident of what transpired with her on 03.09.2006. State counsel then took the court through the FIR lodged by prosecutrix and tried to emphasize the fact that there is no difference in the statement made by the prosecutrix before the court as

well as in the report while lodging an FIR.

9. It is also submitted that the case of the prosecution has also stands corroborated from the deposition of the mother of the prosecutrix to whom she had immediately confided after the incident. Further, the evidence of PW-1, Dr. Pramila Toppo, who has examined the prosecutrix, has also found the victim to have been subjected to sexual intercourse just before the date of examination which further stands corroborated with the evidence of the prosecutrix as well as PW-3, mother of the prosecutrix. Thus, the case of the prosecution has been proved beyond all reasonable doubts and the judgment of conviction of the appellant does not call for any interference and prayed for rejection of the appeal.
10. Having considered the rival contentions put forth on either side and on perusal of record what clearly reflects is the fact the prosecutrix herself had reached to the Police Station and lodged a report stating that the incident is of 03.09.2006 at around 6:00 pm and report is of 04.09.2006 at 10:55 am. There is also an explanation given by the prosecutrix as to why she did not file complaint on the same night on 03.09.2006. The explanation offered is that, her father was a paralyzed man and it had also became dark and therefore he could not take her to the police station in the night and as such she had gone to the police station in the morning itself. Further, from the evidence of PW-3, the mother of the prosecutrix, it is evidently established that the prosecutrix had immediately after the incident rushed to her and confided about the incident which further corroborates her statement. Further, from the

cross examination made to PW-2 & PW-3, there does not appear to be any inimical relationship between the appellant and the family of the prosecutrix or with the prosecutrix so as to falsely implicate the appellant.

11. Further, if we look into the deposition of PW-1, Dr. Pramila Toppo, she has also found the victim to have been subjected to sexual intercourse just prior to the examination being done which further co-relates the offence which is alleged to have been committed by the appellant.
12. All these facts go against the appellant. There is nothing which has been brought on record either in the cross examination or in the nature of defence or also in the statement under Section 313 CrPC by which the prosecution story has to be disbelieved or doubted. In the absence of any doubt created in the mind of the court, this court is constrained to accept the findings of guilt held by the trial court. Thus, for the foregoing reasons, this court has no hesitation in affirming the judgment of conviction of the appellant for the offence under Section 376(1) IPC.
13. At this juncture, learned counsel for the appellant prays that the court below has granted the maximum sentence which could be awarded to the appellant and therefore, the sentence part may be considered sympathetically. He also prays that at the time of commission of offence the appellant was a young boy of 19-20 years and taking into consideration the fact that he has already remained in jail for a considerable long period of more than 5 and ½ years, the sentence part may be reduced to the minimum which could be awarded under Section 376 IPC.

- 14.** Having considered the contentions of the counsel for the appellant on the question of sentence, this court considering the age of the appellant-accused at the time of commission of offence and also taking into consideration the fact that the appellant has remained in jail for a continuous period of 5 years and 8 months, this court is of the opinion that ends of justice would meet if the sentence part awarded to the appellant-accuse is reduced. Accordingly, it is directed that conviction of the appellant is affirmed, however, the sentence part imposed upon the appellant is reduced to the period of 8 years instead of 10 years as awarded by the court below vide its judgment dated 15.12.2011.
- 15.** With the aforesaid modification in the sentence part, the appeal stands dismissed.

Sd/-
(P. Sam Koshy)
Judge