

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 119 of 2013

1. Naniram S/o Bogaram, Aged about 25 years, Caste-Mahra, R/o Village Karmari, P.S. Bastar, Distt. – Jagdalpur (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, Through - Aarkshi Kendra Jagdalpur, Distt.:– Bastar (C.G.)

---- Respondent

For Appellant – Mr. Vikas Shrivastava, Advocate.

For Respondent – Ms. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

16/11/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22-12-2012 passed by the First Additional Sessions Judge, Bastar at Jagdalpur whereby and whereunder the learned trial Judge after holding the appellant guilty for committing rape with the prosecutrix (PW-3) (name not mentioned) after wrongfully confining her and also after giving threat to take life, convicted him under Sections 342, 506 Part II and 376(1) of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced him to undergo rigorous imprisonment for 6 months, rigorous imprisonment for 6 months and rigorous imprisonment for 7 years, to pay fine of Rs. 100/-, Rs. 100/- and Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for 1 month, 1 month and 6 months, without any direction that the substantive jail sentences shall run concurrently.
2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. The prosecution case, in brief, is that the prosecutrix (PW-3) on 23-05-2011 at about 12.30 p.m. went to purchase biscuit in shop of one Chhotu in the village. As the shop was close, she was returning back, the accused/appellant met her and forcibly took her in an empty room behind Chhotu's shop and after pressing her mouth committed forcible sexual intercourse. Child witness Shivcharan (PW-4) witnessed the incident for taking the prosecutrix forcibly by the accused/appellant, he immediately went to the mother of the prosecutrix and thereafter mother of the prosecutrix Lakhami (PW-5) reached to the spot. The accused/appellant on seeing Lakhami (PW-5) on the spot ran away. Thereafter, the prosecutrix was taken to the police station where she lodged the FIR (Ex.-P/3). She was sent for medical examination. Doctor Manisha Goyal (PW-1) conducted the MLC and noticed swelling of upper lip, opined that no definite opinion of rape can be given, vagina admitting one finger tightly swelling present. The prosecutrix was also referred for ossification test. Doctor Govind Singh (PW-6) after ossification test opined that the prosecutrix was above 16 years of age and below 19 years of age. He had given his report Ex.-P/16. During investigation, the accused was also arrested, he was medically examined, noticed as capable to commit sexual intercourse. The statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code').

4. After completion of the investigation, charge sheet was filed before the Chief Judicial Magistrate, Jagdalpur, who registered the same as Criminal Case No.914/11 and committed the same for trial vide order dated 11-07-2011. The learned Additional Sessions Judge received the case on transfer and conducted the trial. The accused/appellant was charged for the offence under Sections 376, 506 and 342 of the IPC.

5. In order to prove guilt of the accused/appellant, the prosecution examined 11 witnesses. Statement of the accused/appellant was also

recorded under Section 313 of the Code in which he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After affording opportunities of hearing to the parties, 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 at the outset would submit that as directed he is not contesting the instant appeal on its merit against conviction of the appellant, he is confining himself only to the quantum of sentence passed against the accused/appellant. As prayed, the accused/appellant was aged about 25 years at the time of incident, he was also residing in the same village, first offender with no any criminal antecedent, he is illiterate person, by labour work he was anyhow managing for his livelihood, he is resident of remote area, also never applied before this Court for suspension of sentence and grant of bail and he is in custody since 5 years, 5 months, 20 days till date; the incident is of 23-05-2011 and as per the earlier proviso for Section 376 Sub-section 1 of the IPC prevailing at the time of incident, court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence for imprisonment for a term of less than 7 years, he will not commit any offence in future and will live in the society peacefully, therefore, his sentence may be reduced and he may be granted opportunity by sentencing him to the period already undergone by him with a direction to run all the substantive jail sentences concurrently.

9. Per contra, learned counsel for the State/respondent opposed the argument advanced and would submit that the appellant, a grown up young male after seeing the prosecutrix aged about more than 16 years all alone forcefully took her in the backside of one Chhotu's shop and forcibly

committed rape after wrongful confinement and under the threat to take life. The statement of the prosecutrix is supported by Shivcharan (PW-4) and mother of the prosecutrix Lakhami (PW-5). The trial Court after appreciating the entire facts moderately sentenced the appellant, hence, the appeal may be dismissed on all the counts.

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

11. On perusal of the entire evidence of the prosecutrix (PW-3), Shivcharan (PW-4), Lakhami (PW-5), Doctor Manisha Goyal (PW-1), it appears that the prosecution duly established the charges framed against the appellant. Also the appellant is not contesting the present appeal on his conviction. With this, in the considered view of this Court, the prosecution duly established the charges framed against the appellant and conviction against the appellant. With this, conviction awarded by the trial Court to the appellant does not require any interference and the same is affirmed.

12. So far as fine sentence awarded to the appellant is concerned. After considering the entire material the fine sentence awarded cannot be held as excessive. Consequently, the fine sentence awarded in all the three counts are also affirmed.

13. So far as the jail sentences and the manner in which substantive jail sentences have to run are concerned, though there is no any order of the trial Court that the substantive jail sentences shall run concurrently, but even on the other side, there is nothing to demonstrate that why the substantive jail sentences shall not run concurrently. With this, this Court is of the considered view that the substantive jail sentences awarded to the appellant is directed to run concurrently. Next question is what would be the quantum of substantive jail sentence regarding Section 376(1) of the IPC in the present matter. As per proviso of law applicable at the time of incident for Section 376 Sub-section 1

prior to the Criminal Law (Amendment) Act, 2013, sec. 9, for section 376 (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 seven years. After perusal of the MLC report (Ex.-P/1) and other evidence, age of the accused, he was the first offender with no earlier criminal antecedent, served the sentence for 5 years, 5 months, 20 days till date, he is illiterate hardly earning his bread by job of labour, in the considered view of this Court, ends of justice would be served if the appellant is sentenced to the period already undergone by him.

14. Consequently, the appeal filed on behalf of the appellant is allowed in part. Conviction of the appellants in all the three counts, fine sentence awarded to the appellant in all three counts are hereby affirmed. The appellant is directed to serve the substantive jail sentences concurrently and for the offence under Section 376(1) of the IPC, instead of rigorous imprisonment for 7 years, the appellant is sentenced to the period already undergone by him. The appellant is in jail, he be released forthwith if not required in any other case and after deposition of the entire fine amount awarded to him. If the fine amount is not deposited, then the authorities concerned are directed to serve the default sentence as per para 19 of the judgment of the trial Court.

15. Appeal partly allowed.

16. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge