

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 166 of 2003

Budhram S/o. Bhanwarsai Satnami, aged 19 years, Village Kataki Dabari, Police out post Hardi Bzar, P.S. Kusmunda District Korba (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Station Officer, Kusunda, District Korba (C.G.)

---- Respondent

For Appellant : Mr. R.K. Pali, Advocate
For Respondent/ State : Mr. Vivek Singhal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

20.11.2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 04.12.2002 passed by Special Judge, Scheduled Caste and Scheduled Tribe(Prevention of Atrocities Act) 1989/Additional Sessions Judge, Bilaspur District Bilaspur (C.G.) in Sessions Trial No. 387/2001, wherein the trial Court convicted the accused/appellant under Sections 376 and 506 of the IPC and sentencing him to undergo R.I. for 7 years and to pay fine of Rs. 300/-, simple imprisonment for 2 months with

default stipulations with a direction to run all the sentences concurrently.

2. The case of the prosecution in brief is that on 20.02.2001 the prosecutrix was alone in her house situated at village Katkidabri at about 2.30 PM as the other members of the family had gone to place of their work at that time the accused/appellant entered into the house and gave some country made medicine to the prosecutrix for improving her pain, thereafter the appellant caught hold her hands and took her inside the room and then he removed her petticoat and saree worn by the prosecutrix and thrown her over the surface and inserted his penis into her vagina and committed forcible sexual intercourse with her. Thereafter, he left the place, before leaving the place the accused/appellant threatened to kill her if she speaks about the incident to anyone. The matter was reported to Police Station Kusmunda on 24.02.2001 after consultation with the family members. After registration of First Information Report, Police authorities investigated the matter. Police seized petticoat and sari of the prosecutrix and also seized underwear of the appellant and both were sent for chemical examination. Doctor who conducted examination of the prosecutrix prepared two slides of vaginal swab of the prosecutrix and was seized by the Police. All seized articles were sent to FSL, Sagar for examination vide Ex .P/11.

3. After completion of the investigation, charge sheet was filed against the appellant in the Court of Judicial Magistrate First

Class, Katghora, who, in turn, committed the case to the trial Court and convicted and sentenced the appellant as mentioned above to which the appellant did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellant as mentioned above.

4. Learned counsel appearing for the accused/appellant submit that the report of FSL is negative and the same is not incriminating circumstance against the accused/appellant. He submits that there is delay for 4 days in lodging the FIR that makes prosecution case doubtful. He further submits that the statement of the prosecutrix is full of contradiction and omission and her version is not reliable as the prosecutrix has not complaint about the incident for considerable time and the whole story does not inspire confidence and the trial Court must discredited the same. He further submits that the appellant is roped with the false charge on account of land dispute, therefore, the findings of the trial Court deserves to be reversed.

5. *Per contra*, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of appeal.

6. I have heard counsel for the parties and perused the material on record.

7. To substantiate the charge prosecution has examined as many as 10 witnesses in their support. To nullify the charge the defence side has examined two witnesses in their support.

8. Prosecutrix deposed on oath that on the date of incident she was alone in the house and her younger brother went to school. It was afternoon about 4 PM the appellant entered into her house and gave her country made medicine for improving pain of her hands and legs, thereafter, the accused/appellant took her inside the room and thrown her on the surface and removed her petticoat and saree and inserted his penis into her vagina and committed forcible sexual intercourse with the her. She further deposed that the accused/appellant threatened to kill her if she will speak about the incident to anyone. She deposed that when her younger sister Bundkunwar came back to house she informed the incident to her, thereafter her sister informed the incident to her mother and father. She further deposed that she reported the matter to Police Station along with her paternal uncle and grandfather.

9. Version of this witness is supported by version of Mathurabai (PW-2), is mother of the prosecutrix. She deposed that her daughter Bundkunwar informed her about the incident and Bundkunwar was informed by the prosecutrix about the incident. This witness deposed the story on the same line what was stated by the prosecutrix. Rajkumari (PW-4) who is paternal aunt of the

prosecutrix deposed on the same line. She further deposed that the accused/appellant tender pardon to her but she asked the accused/appellant to tender the same before the prosecutrix. Version of prosecutrix is again supported by Bundkunwar (PW-5) to whom the prosecutrix narrated the story. Bundkunwar (PW-5) deposed that prosecutrix is her sister and she was weeping when she asked the reason of weeping the prosecutrix stated that she has been ravished by the appellant. The other witnesses of the prosecution have assisted the investigation.

10. Defence witnesses Ramprasad (DW-1) and Bhanwar Sai (DW-2) deposed that Bhanwar Sai is the father of the accused/appellant and Chaitram is the father of the prosecutrix. Both have dispute regarding some land.

11. There is no force in the argument of the counsel for the appellant that the accused/appellant has been roped in a false case on account of land dispute and there is contradiction and omission in the statement of the prosecutrix recorded before the Police as well as in the Court. The prosecutrix has been subjected at length to cross-examination but after searching cross-examination nothing could be elicited in favour of the appellant, minor contradictions which do not go to the root of the case are inconsequential and the same occurs because of long interval between the date of recording of the statement of the prosecutrix before the police and before the Court, but there is no contradiction or omission in the statement of the prosecutrix regarding commission of rape. This Court also does not find any

substance in the argument of the defence counsel that the appellant has been roped in false charge on account of property dispute. The Court cannot overlook the fact that in sexual offences and in particular, the offence of rape that too on a girl there will be long lasting scar on her forehead and there is reluctance of the prosecutrix or her family members to go to the Police Station and to make a complaint about the incident which concerns the reputation and the honour of the entire family when any incident like rape is happened. The family members go for report only after giving very cool thought and considering all pros and cons arising out of an unfortunate incident. True it is that there is 3 days delay in lodging the report but dealing with the delay in lodging the FIR in a case of sexual assault is dealt by the Hon'ble Apex Court in the matter of **State of Himanchal Pradesh v. Presi Singh (2009)1 SCC 420** and it was held as under-

“6.....the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In the

score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction”.

12. In yet another case involving delay in lodging the FIR in sex related offences it has been held by the Hon'ble Apex Court in the matter of **OM Prakash v. State of Haryana (2011) 14 SCC 309**

“ **18.** There is some delay in lodging the FIR but the delay has been well explained. A young girl who has undergone the trauma of rape is likely to be reluctant in describing those events to anybody including her family members. The moment she told her parents, the report was lodged with the police without any delay. Once a reasonable explanation is rendered by the prosecution then mere delay in lodging of a first information report would not necessarily prove fatal to the case of the prosecution.

13. The argument advanced by the counsel for the accused/appellant with regard to delay on the part of the prosecutrix in lodging the FIR is accordingly turned down.

14. Thus in the light of factual and legal aspects of the matter, this Court is of the considered opinion that the statement of the prosecutrix supported by other witnesses inspires confidence and the findings recorded by the trial court are based on due appreciation of evidence on record and there is no illegality or

infirmity in the same. The appeal is without any substance and is liable to be and is hereby dismissed.

15. The appellant is behind the bar and the trial court will send supersession warrant for serving out the remaining sentence by the appellant.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Santosh