

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 5 OF 2006

Jagatram, S/o Dhirja Rohitdas, age 32 years, occupation- Labourer, R/o Village- Mudhali, P.S. Kusumunda, Tahsil Katghora, District Korba (C.G.)

... Appellant

versus

State of Chhattisgarh, through Police Station Pali, District Korba (C.G.)

... Respondent

For Appellant	:	Mr. V.K. Tekam, Advocate, as Amicus Curiae.
For Respondent-State	:	Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

07/10/2017

1. The present is an appeal preferred by the Appellant assailing the judgment of conviction and sentence dated 5.2.2005 passed by the Sessions Judge, Korba, in Sessions Trial No. 51 of 2004.
2. Vide the impugned judgment, the Appellant has been convicted for the offence punishable under Section 376 read with Section 34 of IPC and sentenced to undergo R.I. for 10 years along with fine of Rs.1000/- with default stipulation of an additional R.I. for 6 months in the event of not depositing the fine amount.
3. Since the Counsel engaged by the Appellant was not present even when the matter was called out on two occasions, this Court thought it fit to take the assistance of Shri V.K. Tekam, Advocate, who is present in the Court, in the disposal of the present appeal.
4. Brief facts of the case as per the prosecution are that on 22.11.2000 the Appellant along with another co-accused, namely, Umashankar, is said to have forcefully taken the Prosecutrix, a minor girl aged around 15 years, to an isolated area and is said to have ravished her. The matter was reported at Police Station Pali where it was registered as Crime No. 216/2000, FIR of which is Exhibit P-13.

5. The present Appellant initially had absconded from the village and the co-accused Umashankar was arrested and put to trial vide Sessions Trial No. 54/2001. The Court below vide its judgment dated 10.4.2001 had found the said co-accused Umashankar to be guilty of having committed the offence under Section 376 read with Section 34 of IPC and after convicting him, had sentenced him to undergo R.I. for 10 years along with fine of Rs.1000/- with default stipulation.

6. The said co-accused Umashankar had assailed the aforesaid judgment dated 10.4.2001 vide Criminal Appeal No. 651 of 2002 which came for final hearing on 28.7.2008 and this Court vide its judgment dated 28.7.2008 confirmed the conviction of Umashankar however reduced the sentence imposed upon him to the period already undergone by him, which was 7 years and 8 months, maintaining the fine part.

7. The present Appellant who had subsequently been arrested was put to trial vide Sessions Trial No. 51 of 2004 and taking into account the evidence which have come on record, the Court below vide the impugned judgment dated 5.2.2005 convicted him under Section 376 read with Section 34 of IPC and sentenced to undergo R.I. for 10 years along with fine of Rs.1000/- with default stipulation, as was imposed in the case of co-accused Umashankar.

8. Shri V.K. Tekam, learned Counsel assisting on behalf of the Appellant, submits that it is a case where the Appellant has been falsely implicated in the instant case and the order of conviction is bad in law and deserves interference. According to Shri Tekam, the statement of the Prosecutrix recorded right from the time of lodging of FIR till her statement recorded during the course of trial would show that the Appellant has not committed any sexual intercourse with the Prosecutrix and therefore he could not have been convicted for the offence under Section 376 of IPC.

9. Learned Counsel for the State however opposing the appeal submits that from the case of the prosecution as also from the deposition of the Prosecutrix, it has been well proved and established that the Appellant had also assisted the co-accused Umashankar in forcibly taking the Prosecutrix from the agriculture field to an isolated area into the jungle where the Appellant as well as the co-accused Umashankar had forcefully removed all the dresses which she was wearing and thereafter because there was a dispute between the co-accused Umashankar and the present Appellant in respect of who would first commit sexual intercourse with the Prosecutrix, there was a fight and the present Appellant later ran away from the scene of occurrence. This proves the intention of the Appellant as also his active participation in taking the Prosecutrix from the field to the jungle and thus the case of the Appellant is on the same footing as that of the co-accused Umashankar. The appeal thus prayed for to be rejected.

10. Having considered the rival contentions put forth on either side and on perusal of the record, particularly the deposition of the Prosecutrix as also the FIR which she had lodged, the fact is evidently proved that the Appellant and the co-accused Umashankar had together forcibly dragged the Prosecutrix from the field to the jungle. It is also evidently clear that the intention of both the accused persons were that of ravishing the Prosecutrix. It is also evidently proved by the statement of the Prosecutrix that the Appellant and the co-accused Umashankar both had played an active participation in forcefully throwing the Prosecutrix down on the ground and thereafter removing the entire clothes that she was wearing to the extent that the Prosecutrix was made naked by the two accused persons. This act on the part of the Appellant in spite of the fact that he did not commit sexual intercourse with the Prosecutrix would not absolve him

from the necessary ingredients as are required under Section 376 with the aid of Section 34 of IPC.

11. This Court thus has no hesitation in reaching to the conclusion that the finding arrived at by the Court below in holding the Appellant guilty of the offence under Section 376 of IPC is proper, legal and justified and does not warrant interference.

12. However, since the co-accused Umashankar who is the main accused and who had actually committed the sexual intercourse with the Prosecutrix having been released after undergoing the jail sentence of about 7½ years, this Court is of the opinion that ends of justice would meet if the sentence imposed upon the present Appellant is also reduced to the period similar to that of the co-accused Umashankar, that is of 7 years and 8 months.

13. With the aforesaid modification in sentence part, the appeal stands rejected affirming the conviction of the Appellant for the offence under Section 376 read with Section 34 of IPC.

14. It has been informed that the Appellant stands released from jail on completion of his jail term. Hence, no further steps are required to be done.

Sd/-
(P. Sam Koshy)
Judge