

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 746 of 2009

1. Robert Uraon S/o Beersai Uraon, aged about 30 years, R/o Vill.Kusmi, Behind State Bank, Surguja (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, Through P.S. Kusmi, Distt. Surguja (C.G.)

---- Respondent

For Appellant – Shri Shakti Raj Sinha and Shri Nishikant Sinha, Advocates.
For Respondent – Shri Om P. Sahu, Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

22/03/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 3rd October, 2009 passed by the IIIrd Additional Sessions Judge, (FTC), Ambikapur, Surguja, C.G. in Sessions Trial No. 05/08 whereby and whereunder the learned trial Judge after holding the appellant guilty for house trespass in order to commit offence punishable with life imprisonment and also to commit rape with the prosecutrix (PW-7)(name not mentioned) convicted him under Sections 450, 376(1) of the IPC and sentenced him to undergo R.I. for 10 years, R.I. for 10 years and also to pay fine of Rs.2000/-, Rs.2000/-, in default of payment of fine, to further undergo additional R.I. for 2 months, 2 months with a direction that both the substantial jail sentences shall run concurrently and the period of detention from 25-07-2007 till date of the judgment be set off as per provision of Section 428 of the Code of Criminal Procedure, 1973 (in short 'the Code').

2. Conviction is impugned on the ground that without there being any iota of evidence the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per the case of the prosecution, on 22-07-2007 at about 1.00 a.m. in night when the prosecutrix, aged about 19 years a married lady, was sleeping with her husband, the accused/appellant, near relative of the prosecutrix, came, held the hand of the prosecutrix, took her forcibly in her room and after removing her clothes committed sexual intercourse without consent and will of the prosecutrix and threatened her not to disclose this fact to anyone. As the accused/appellant recently released in a matter in connection with one murder, the prosecutrix had frightened, later she narrated the story to her mother-in-law and near relatives. Thereafter, on 24-07-2007 she reached to police station Kusami and lodged the report at 5.30 p.m. Police registered the crime No.55/07 under Sections 450, 376 of the IPC against the accused/appellant and after obtaining necessary consent the prosecutrix was examined by Doctor Mrs. J.B.Minj (PW-4) who gave her report Ex.-P/5 and also referred the undergarment for chemical analysis vide report Ex.-P/6. The statements of the witnesses were recorded under Section 161 of the Code. The accused/appellant was arrested. The clothes were duly seized. The accused was sent for examination. Doctor T.Sai (PW-3) examined the accused and opined that he is capable of committing sexual intercourse and gave his report Ex.-P/4.

4. After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, who registered the same as Criminal Case No.131/07 and committed the same vide order dated 22-12-2007 to the Court of Sessions for trial in accordance with law. The learned trial Judge received the case on transfer and framed the charges under Sections 450, 376(1) of the IPC.

5. In order to prove guilt of the accused/appellant, the prosecution examined 11 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After providing opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8. At the outset, learned counsel for the appellant would submit that, as instructed, he is not assailing the conviction part imposed upon the appellant, he is confining himself to the quantum of the sentence. The accused/appellant is in jail since 25-07-2007 to till date, with this, he has served the sentence for 9 years and more than 8 months till date. He was the first offender. Looking to the entire facts and circumstances, as he has completed almost the entire substantive jail sentence, he may be sentenced to the period already undergone by him.

9. Per contra, learned counsel for the respondent/State duly supported the judgment of conviction and sentence awarded to the appellant by the trial Court.

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

11. After perusal of the statement of the prosecutrix (PW-7) and other witnesses, this Court is of the considered view that the trial Court rightly

convicted the accused/appellant for the offence under Sections 450, 376(1) of the IPC. Also the appellant is not contesting the instant criminal appeal for the conviction part. Consequently, conviction awarded to the appellant requires no any interference. So far as fine sentences awarded to the appellant is concerned, the same may not be held as excessive. Hence, the fine sentence also does not require any interference.

12. So far as quantum of substantive jail sentences are concerned, the appellant has already served almost the entire sentence, left a few months to be completed, he was the first offender and upon entire consideration, it would be appropriate to sentence the accused/appellant to the period already undergone by him.

13. Consequently, the appeal filed by the appellant is partly allowed. Conviction of the appellant under Sections 450, 376(1) of the IPC is hereby affirmed. Fine sentences awarded to the accused/appellant are also hereby affirmed. So far as substantive jail sentences are concerned, instead of R.I. for 10 years and 10 years with a direction that both the substantive jail sentences shall run concurrently, the accused/appellant is sentenced to the period already undergone by him. The accused/appellant is in jail. He be released forthwith if not required in any other case after paying the fine amount as awarded by the trial Court. If the fine amount is not deposited, the authorities concerned are directed to serve the accused/appellant the default sentence as per para 31 of the judgment of the trial Court.

14. Appeal allowed in part.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE