

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 5 of 2011

- Bahorikdas Manikpuri S/o Dhunaridas Manikpuri, aged about 42 years, R/o Village Masulgidhi, Thana-Saja, District Durg, at present R/o Village Ranjeetpur, Thana Sahaspur Lohara, Distt.-Kabirdham, C.G.

---- Appellant

Versus

- State Of Chhattisgarh, Through- Police Station Sahaspur Lohara, District Kabirdham (CG)

---- Respondent

For Appellant	:	Shri Sameer Singh, Advocate
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble The Acting Chief Justice

Judgement

20/02/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.8.2010 passed by the Sessions Judge, Kabirdham (CG) in S.T. No.12/2010 convicting the accused/appellant under Section 376 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 10 years and fine of Rs.5,000/-, in default to undergo additional R.I. for 1 Year & 6 months.
2. As per prosecution case, on 26.2.2010 at about 7.05 p.m. the prosecutrix, a widow aged about 30 years, lodged FIR (Ex.P-1) alleging in it that on that day at about 2.00 p.m. when she was working in her house, the accused/appellant, who is husband of her step daughter and residing with her, caught hold of her, took her to the verandah, tied her her hands &

legs with rope, inserted a piece of cloth in her mouth and committed forcible sexual intercourse with her after upturning her saree & peticoat. Based on this report, the offence under Section 376 IPC was registered against the accused/appellant. The prosecutrix was sent for medical examination which was conducted by Dr. Pushplata Maheshwar (PW-7) on 27.2.2010 vide Ex.P-4A, who did not notice any external or internal injury on the person of the prosecutrix and found her to be habitual to sexual intercourse. The accused/appellant was also medically examined by Dr. A.K. Bangde (PW-6) who gave his report of Ex.P-6A opining him to be fully capable of having sexual intercourse. On completion of investigation, charge sheet was filed against accused/appellant for the offence punishable under Section 376 IPC followed by framing of charge by the Court below under the aforesaid section.

3. The prosecution in order to bring home the charge levelled against accused/appellant examined 08 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted & sentenced the accused/appellant as described above.
5. Learned counsel for accused/appellants submits that he is not challenging the conviction of the appellant but is confining his argument only to the quantum part of the sentence. He submits that since the appellant is in custody for the last seven years, which is the minimum sentence prescribed under the law for commission of rape, the ends of justice would be served if by upholding the conviction of appellant under Section 376 IPC, he is sentenced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that considering the gravity of offence, the punishment imposed upon the appellant is proportionate to the act committed and therefore there is no justification in reducing the same.
7. I have heard learned counsel for the parties and perused the record and impugned judgment of the trial Court.
8. The prosecutrix (PW-1) has stated that the accused/appellant is the husband of her step daughter. She lost her husband about eight years back from whom she is having two issues who are living with her. On the fateful day when she was working in her house, the accused/appellant came near to her, caught hold of her from her back, dragged her to verandah, made her to lie on the ground, tied both her hands and legs by rope, inserted a piece of cloth in her mouth and committed forcible sexual intercourse with her after upturning her saree & peticoat. She has further stated that immediately after the incident she disclosed the entire incident to the villagers and then lodged the report. In the cross-examination she remained very firm and nothing could be elicited which makes her testimony doubtful.
9. Lakhan Nirmalkar (PW-2), Gautarhin Bai (PW-3) & Shesh Narayan Singh (PW-4) are the persons to whom the prosecutrix had disclosed the incident immediately.
10. A.R. Sahu (PW-5) is the investigating officer and he has duly supported the prosecution case.
11. Dr. A.K. Bangde (PW-6) is the person who medically examined the accused/appellant vide Ex.P-6A and opined that he was capable of performing sexual intercourse.

12. Dr. Pushplata Maheshwar (PW-7) is the person who medically examined the prosecutrix vide Ex.P-4A. According to this witness, the vagina of prosecutrix was easily admitting two fingers, no mark of injury was found on internal or external part of the body and she was habitual to sexual intercourse. According to the doctor, she did not notice any sign of sexual intercourse within 24 hours.
13. Bharat Sen (PW-8) is the witness of seizure memo Ex.P-3 by which rope and piece of cloth was seized.
14. In the present case counsel for the accused/appellant is not challenging the conviction part but praying for reduction of sentence to the period already undergone by accused/appellant. The Supreme Court in catena of judgements has held that in an appeal against conviction, the appellate Court is under duty and obligation to look into the evidence adduced in the case and arrive at an independent conclusion. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court's conscience must be satisfied before passing the final order that the said concession is based on the evidence on record. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced.
15. In the light of the above principles, this Court proceeds to examine legality of the conviction imposed on the appellant on the basis of evidence available on record.
16. Close scrutiny of the evidence of the prosecutrix makes it clear that on the fateful day while she was working in her house, the accused/appellant came there, caught hold of her hand, took her to verandah and there

committed forcible sexual intercourse after inserting a piece of cloth in her mouth. The incident was immediately disclosed by the prosecutrix to her neighbours Lakhan Nirmalkar (PW-2), Gautarhinbai (PW-3), & Sheshnarayan (PW-4), who have duly supported version of the prosecutrix. Statement of the prosecutrix also gets corroboration from the promptly lodged FIR (Ex.P1). Since the prosecutrix is a widow, the corroboration of her statement by way of medical evidence cannot be expected to be a necessity. It is settled law that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. Statement of prosecutrix itself is sufficient to sustain the findings of conviction recorded by the trial Court. In this case the prosecutrix has given a vivid account of the entire episode as to how the accused/appellant sexually assaulted her which being fully reliable and trustworthy needs no corroboration from any other source. Moreover, nothing has been elicited by the defence as to why the appellant has been falsely implicated in this case, who is none other but son-in-law of the prosecutrix, and thus the stand of false implication taken by the accused/appellant is also not worth acceptance. Thus, conviction of the accused/appellant under Section 376 IPC suffers from no illegality and the same is hereby maintained.

17. The only question which arises for consideration of this Court is as to what would be appropriate sentence to be imposed upon the appellant?
18. Considering the fact that the incident is of the year 2010, accused/appellant was taken into custody on 27.2.2010, at the time of arrest he was aged about 42 years and further considering that he is in jail for the last about seven years, this Court is of the opinion that the ends of

justice would be met if the sentence awarded to him is reduced to seven years from that of ten years as awarded by the trial Court

19. In the result, the appeal is partly allowed. While maintaining conviction of accused/appellant under Section 376 IPC, the sentence imposed on him under that section is reduced to seven years, which is the minimum sentence awardable under Section 376 IPC. The period of detention already undergone by accused/appellant shall be adjusted.

Sd/-
(Pritinker Diwaker)
Ag. Chief Justice

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