

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 160 of 2011

- Narsingh S/o Lakhanlal, aged about 36 years, Occupation - Agriculturist, R/o Village Fuljhar, Police Station Somni, Distt. Rajnandgaon (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through the Police Station Somni, Distt. Rajnandgaon (CG)

---- Respondent

For Appellant	:	Shri AN Pandey, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

20/02/2017

This appeal arises out of the judgment of conviction and order of sentence dated 10.2.2011 passed by the First Additional Sessions Judge, Rajnandgaon in S.T.No.24/2010 convicting the accused/appellant under Sections 376 & 342 of IPC and sentencing him to undergo RI for ten years, to pay a fine of Rs.500/- with default stipulation and RI for six months, respectively.

02. Brief facts of the case are that on 1.2.2010 FIR (Ex.P/4) was lodged by mother of the prosecutrix PW-4 Amrat Mahilange alleging in it that prosecutrix is her elder daughter, who is mentally challenged and even does not speak properly and makes conversation by way of gesture. She states that marriage of the prosecutrix was solemnized

about 10 years back, but she is living with her. On 28.1.2010 when she returned after taking bath, she was informed by the prosecutrix through gestures that the accused/appellant who is residing near her house called her and after removing her clothes committed forcible sexual intercourse with her. She has stated that when Bindabai called out Lata, the appellant opened the door and asked the prosecutrix to go from there. Bindabai had seen the accused/appellant taking the prosecutrix forcibly into the house. She states that out of fear she did not disclose the incident to her husband on the same day and informed about the same on the next day and after discussion in the family, she has lodged the report. Based on this FIR, offence under Section 376 of IPC was registered against the appellant. The prosecutrix was medically examined by PW-5 Dr. (Smt.) Sajida Alam vide Ex.P/5, who found no external or internal injury on her person, her hymen was old torn and she was habitual to sexual intercourse. The accused/appellant was also medically examined and was found to be capable of performing sexual intercourse vide Ex.P/8. After completion of investigation, charge sheet was filed under Sections 376 & 342 of IPC against the appellant followed by framing of charge by the trial Court accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined one Yuvdas Sahu.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Contention of learned counsel for the appellant is as under:

(i) that the accused/appellant has been falsely implicated on the basis of some inadmissible evidence.

(ii) that there is three days delay in lodging the FIR and same has not been explained by the prosecution satisfactorily.

(iii) that the medical report of the prosecutrix also does not support the case of the prosecution.

(iv) that prosecutrix does not appear to be trustworthy and the appellant is, in fact, a victim of village politics.

06. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. She submits that present is a case where a mentally challenged lady has been subjected to forcible sexual intercourse by the appellant and therefore, he has rightly been convicted and sentenced by the trial Court.

07. Heard learned counsel for the parties and perused the material available on record.

08. Before proceeding to record the evidence of the prosecutrix, the trial Court in order to satisfy itself about her mental condition put certain general questions to her and considering the manner in which

she answered those questions as also her demeanour, the trial Court after being satisfied that she is mentally challenged, proceeded to record her statement with the help of a trained interpreter. By way of gesticulation she has disclosed as to the manner in which she was subjected to rape by the appellant. On all material points, she remained consistent and has supported the prosecution case. From her overall statement it appears that while recording her evidence, the trial Court was very careful in observing her demeanour and the extent of her capability to understand the questions put to her.

09. PW-1 Arjun Mahilange, father of the prosecutrix, has stated that her daughter/prosecutrix is somewhat mentally weak and is not able to speak properly. He has stated that on 28.1.2010 he had gone to his workplace and two days after his return, he was informed by his wife as to the manner in which his daughter/prosecutrix was raped by the appellant and then report was lodged. PW-2 Bindabai, neighbour of the prosecutrix, has stated that the prosecutrix is mentally weak. On the date of incident when she returned from village pond after taking bath, she heard the screams of the prosecutrix; when she knocked at the door the prosecutrix opened the door and thereafter, she (this witness) went to her house. However, at this stage this witness has been declared hostile. PW-4 Amrat Bai, mother of the deceased and lodger of FIR, has stated that on the date of incident when she returned from village pond, she was informed by the prosecutrix as to the manner in which she was ravished by the appellant. She states that two days after return of her husband she informed him about the same and then report was lodged. In cross-examination, nothing could be elicited by

the defence from this witness which could make her evidence untrustworthy or doubtful.

10. PW-5 Dr. Smt. Sajida Alam medically examined the prosecutrix on 2.2.2010 vide Ex.P/5. On her examination, she did not notice any external or internal injury, her hymen was old torn and she was habitual to sexual intercourse. She has also admitted that the prosecutrix was not behaving like a normal person, she was not able to answer some of the questions, however, she (this witness) has not mentioned about the mental condition of the prosecutrix in her report. She has clarified that as no opinion or report was sought from her regarding mental condition of the prosecutrix, she did not mention about the same in her report. PW-7 Ku. Yogita Khaparde, investigating officer, has duly supported the prosecution case.

11. DW-1 Yuvdas has stated that the appellant has been roped in this offence because of village politics and there was no village meeting convened in respect of the alleged incident.

12. Close scrutiny of the evidence makes it clear that on 28.1.2010 it is the accused/appellant who taking advantage of the mental condition of the prosecutrix, a mentally challenged lady, forcibly took her to the house of Dashmath Bai and committed rape with her. In her evidence the prosecutrix by way of gestures, which were duly interpreted by the trained interpreter appointed by the trial Court, has described the manner in which she was taken by the appellant and was subjected to forcible sexual intercourse by him. Her statement inspires confidence of the Court. This apart, her statement finds due corroboration from the

statement of her mother (PW-4). So far as medical evidence is concerned, though no injury was found on the person of the prosecutrix and she was opined to be habitual to sexual intercourse, since the prosecutrix was a married lady, her being habitual to sexual intercourse is quite natural and furthermore, in the facts and circumstances of the case, mere absence of injury on the person of the prosecutrix, in particular when she is mentally challenged lady, can, in no way, be said to be fatal to the prosecution case.

As regards delay in lodging FIR, it has come in the evidence of the prosecution witnesses that father of the prosecutrix was informed two days after the incident and the report was lodged after discussing the matter in the family. In cases like rape or outraging the modesty of a woman, the aggrieved or the injured person or her relations naturally think twice before making a complaint to the police. It is much more so in the villages because it involves the prestige and reputation of the family of the victim. The delay will be fatal in cases of murder or such sort of cases, but it will not be so in the cases of this nature. Therefore, in the facts and circumstances of the case, considering the reasons offered by the prosecution for delay in lodging the FIR, this Court is of the opinion that the delay occurred in reporting the matter to the police is not at all fatal to the prosecution case and therefore, the appellant cannot derive any benefit of it.

13. Thus, considering the overall evidence on record, this Court is of the opinion that the prosecution on the basis of evidence adduced by it has been successful in proving that it is the accused/appellant who wrongfully confined the prosecutrix in the house of Dashmat Bai and

committed rape with her there. Being so, his conviction under Sections 376 and 342 of IPC is based on just and proper appreciation of the evidence and deserves to be affirmed.

14. In the result, the appeal being without any substance fails and is, accordingly, dismissed.

Sd/

(Pritinker Diwaker)

Ag. Chief Justice

Khan