

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 757 of 2007**

- Jageshwar Singh s/o. Chaman Singh, aged about 24 years, r/o.; Saakin Devri (Balaji), PS Narharpur, District Kanker (CG).

---- Appellant**Versus**

- State Of Chhattisgarh through SHO PS Narharpur, District Kanker (CG).

---- Respondent

For Appellant	:	Mr. Rahul Kumar Advocate appears on behalf of Mr. R.S. Marhas, Advocate.
For Respondent/ State	:	Mr.. Sameer Behar, Panel Lawyer

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)**28-10-2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 31-7-2007 passed by the Additional Sessions Judge, North Bastar, Sessions Division Kanker (CG), in Sessions Trial No. 138 of 2006 whereby the trial court after holding the appellant guilty for commission of rape convicted him under Section 376 of the IPC and sentenced him to undergo RI for seven years and fine of Rs.1000/- with default stipulations.
2. As per prosecution case, the prosecutrix had gone to the house of one Chaman Singh on 5-8-2005 for taking meals and was returning with accused/appellant at about 10.00 pm. When they reached near school, accused/appellant caught hold her and committed rape on her.

On hearing cries of prosecutrix, Tamradhwaj (PW/3), Balaram (PW/4) and Kamal (PW/5) reached there and thereafter one meeting was organized and they decided to lodge the report against the appellant. Report was lodged in Police Station Narharpur and thereafter Police agency swung into action. Prosecutrix was sent for medical examination and certain articles were seized during investigation. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 and after completion of the investigation charge-sheet was filed against the appellant. The trial Court framed charges as mentioned above against the appellant, to which he did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded. After completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

3. Learned counsel appearing for the appellant submits as under:

- (i) Prosecutrix is not stable in her version as stated in examination-in-chief and in cross examination she categorically stated that nothing wrong was committed by the appellant and, therefore, her version cannot be acted upon;
- (ii) Husband of the prosecutrix has stated that nothing wrong was committed by the appellant, therefore, offence under Section 376 of the IPC is not made out.
- (iii) All other witnesses suggest that no offence under Section 376 of the IPC is committed by the

appellant.

(iv) Report is lodged in Police Station after consultation with the people of the village and after thought version is narrated in police report.

(v) No injury was found on the body of the prosecutrix and that shows the innocence of the accused/appellant.

4. Against the aforesaid submissions, learned State counsel submits as under:

i) that the statement of the prosecutrix is supported by the version of Parsuram (PW/2), Tamradhwaj (PW/3) and Balram (PW/4) and from their statements, it is established that the appellant has committed rape on prosecutrix.

ii) As per medical report, sperm was found on the clothes of the victim and that is corroborative piece of evidence.

lii) Meeting was organized in the village for commission of the offence and that proves the offence was committed against the prosecutrix.

iv) There is no reason for the victim to expose herself for the offence and her version is reliable in all sense.

v) Evidence of prosecutrix is sufficient to establish the charge against the appellant.

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

6. To sustain the charge, prosecution has examined as many as 14 witnesses.

7. Parsuram (PW/2), Tamradhwaj (PW/3), Balram (PW/4), Kamal (PW/5), Jai Singh (PW/6) are the persons to whom the incident was narrated by the prosecutrix after the incident and they are not witnesses to the incident. As per their statements, after receiving information from the prosecutrix they arranged a meeting in the village and thereafter it is decided that the matter be reported to Police Station. Star witness of the prosecution is the prosecutrix.

8. For offence under Section 376 of the IPC, it is essential that it must be proved that sexual intercourse is done against the will and consent of the prosecutrix. As per medical jurisprudence, sexual intercourse in law reads as under:

“Thus to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains”.

9. Now the point for consideration is whether the prosecution has proved that penetration is done by the accused/appellant. Prosecutrix (PW/1) deposed that she went to the house of Chaman Singh and took meals there and thereafter while returning to her house, on the way to the house, accused/appellant met her and when she reached near school, the appellant caught hold her hand and thereafter dragged her to the school and caused insult to her. In para 10 of her cross examination

she deposed that accused/appellant caught hold her hand and committed insult to her and did not do more. Again in para 12 of her cross examination she deposed that nothing wrong was committed by the appellant against her. She deposed in para 16 of her cross examination that nothing wrong was committed to her.

10. In **Aman Kumar Vs. State of Haryana, reported in (2004) SCC 379,**

Hon'ble the Supreme Court has observed as under:

”7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (see Joseph Lines, IC*K 893),..... The rupture of hymen is by no means necessary to constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur within the hymen remaining intact.”

11. In the case on hand, prosecutrix has stated in examination-in-chief that insult was caused to her but in cross examination she deposed that nothing wrong was done against her. The prosecution was under obligation to establish that there was forceful penetration against the will and consent of the prosecutrix , but the same is not brought on record even in examination-in-chief. All other witnesses examined by the prosecution stated about the meeting regarding incident, but their version is not sufficient to establish whet her penetration was caused

by the accused/appellant or not.

12. PW/7 Dr. Niharika Dhurve who examined the prosecutrix deposed that some dent was found in the petty-coat of the prosecutrix and that may be of semen or some other material and she advised for chemical examination of the same. From the evidence it is established that prosecutrix is a married woman aged about 33 years at the time of incident. Statement of medical expert is of no help to the prosecution and there is no chemical examination report as per advice of the medical expert.
13. It is settled law that more serious the offence, stricter the degree of proof and in case of rape, without establishing penetration by the accused appellant, it is difficult for this court to hold that it is a case of sexual intercourse without consent or will of the prosecutrix. Conclusion arrived at by the trial Court has lost sight of this legal aspect of the matter and that is why the judgment of the trial Court is not sustainable.
14. Accordingly, the appeal is allowed. Appellant is acquitted of the charge under Section 376 of the IPC and his conviction and sentence awarded by the trial Court is set aside. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju_

