

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 902 of 2010**

Suresh Nishad S/o. Jhanau Ram Nishad aged about 26 years, Village – Chichbod, Police Station – House Ranchirai, District – Durg (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station – House Ranchirai, District – Durg (CG)

---- Respondent

Shri Gajendra Sahu, counsel under instructions from Shri Ashok Verma, counsel for the appellant/s.
Shri Suryakant Mishra, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****25/11/2017**

This appeal is directed against impugned judgment of conviction and order of sentence dated 07/07/2010 passed by the 11th Additional Sessions Judge (FTC) Durg, District – Durg (CG) in Sessions Trial No.212/2008 whereby the appellant has been held guilty of commission of offence under Section 506 (ii) IPC and Section 376 (i) of IPC and sentenced to undergo R.I. of seven years with fine of Rs.500/- and in default, six months R.I.

2. According to the prosecution story, Kunti Bai (PW1) lodged FIR in Exhibit P/9 on 31/10/2008 in the police station – Ranchirai, alleging that she was caught hold of by the appellant, taken to the agricultural field and subjected to rape. On the report of the prosecutrix, a crime under Crime No.150/08 was registered. The prosecutrix was sent for medical examination. Wearing apparels of the prosecutrix

were seized. Appellant was arrested. Wearing apparels of the appellant were also seized and sent for medical examination. Investigation conducted, statement of the prosecution witnesses recorded and thereafter, charge sheet was filed. The case was committed for trial and the appellant was tried for commission of alleged offence under Section 376 (1) of IPC. The appellant abjured guilt and subjected to trial.

3. In order to prove its case, the prosecution examined as many as seven witnesses. Thereafter, the appellant was examined under Section 313 CrPC in respect of the incriminating circumstances against him. The appellant, though, admitted having known the prosecutrix, denied all other circumstances. In his defence, he has stated that he is innocent. No defence evidence was led. Relying upon the evidence of the prosecution and holding proved the circumstantial evidence pointing towards the guilt of the appellant, learned Trial Court held the appellant guilty of commission of offence and sentenced as described above.

4. Learned counsel for the appellant submits that though the incident is said to be of early hours of 31/10/2008, report was not lodged immediately and in fact, in the FIR, no time was mentioned. Assailing the judgment of conviction and order of sentence, learned counsel for the appellant submits that the prosecution story is liable to be disbelieved. He would submit that the manner in which the incident has been described by the prosecutrix is highly improbable. He would further submit that the testimony of the prosecutrix is not supported by the independent evidence because there was no injury found on any part of the body though according to the prosecutrix, she was dragged to the field, thrown on the ground and subjected to rape. He would further submit that the evidence of the prosecutrix is highly doubtful and it is a case of false implication because according to the evidence of the doctor, no injury, whatsoever was found on the private parts

of the prosecutrix. He further submits that there is contradiction and omission in the evidence of the prosecutrix with regard to the manner in which, she was subjected to rape. Therefore, the case of the prosecution is liable to be disbelieved.

5. Learned State counsel supports the case of the prosecution and submits that the prosecutrix lodged report on the date of incident itself though the place of incident is situated at a distance of 22 kms from the police station. He would further submit that the prosecutrix has categorically stated in her FIR as also in the Court statement that the appellant had forcefully taken her in the nearby field and committed rape on her. She has remained firm in her cross examination. Lodging of FIR on the date of incident is proved from the testimony of the prosecutrix - Kunti Bai (PW1) as also from the evidence of the Investigating Officer - L.D.Diwan (PW7). Learned State counsel further submits that other prosecution witnesses namely Nandlal Sahu (PW2) has supported the case of the prosecution by stating in his evidence that she found the prosecutrix crying on the road and she disclosed to this witness that she was ravished by a boy of her own village namely Kewat Suresh Nishad. Therefore, conviction does not warrant any interference.

6. FIR (Exh.P/9) has been proved by the prosecutrix as well as by the Investigating Officer- L.D.Diwan (PW7). The prosecutrix-Kunti Bai (PW1) has stated in para 6 of her testimony that she had gone to the police station - Ranchirai and lodged report. The report was read over to her and thereafter, she affixed her thumb impression. Para 8 shows that the FIR was read over to her and she put her thumb impression. In her cross examination, there is no suggestion given to her that she did not lodge any report in the police station.

L.D.Diwan (PW7), Sub-Inspector and Investigating Officer of the case has

deposed in his evidence that on 31/10/2008, Kunti Bai had lodged report of commission of offence in the police station on which, crime under Crime No.150/08 for alleged commission of offence under Section 376 of IPC was registered by him. He has proved his signature and also stated the prosecutrix put her thumb impression in the FIR. Nothing could be elicited in the cross examination to impeach credibility of this witness in so far as lodging of FIR is concerned.

7. FIR lodged by the prosecutrix on 31/10/2008 itself does not indicate the time of lodging of FIR nor in the evidence, it is anywhere stated as to exactly at what time, FIR was lodged in the police station. However, the evidence of the prosecution witnesses, including that of the prosecutrix, does reveal that the incident happened early in the morning at 6 AM. Soon thereafter, the prosecutrix came out on the road and started crying. According to Nandlal Sahu (PW2), he heard prosecutrix crying, he approached and the incident was disclosed to him by the prosecutrix. According to the prosecutrix, she went to the village, she discussed the matter with the villagers and then there was a gathering of villagers and elderly persons. The appellant was also called. Upon enquiry, the appellant first denied but later on, admitted having committed the offence and then the report was lodged in the police station.

8. The police station is stated to be about 22 kms away from the place of incident. After the incident happened, according to the prosecutrix, she had gone to her village. Thus, it appears that right from the time, the prosecutrix was subjected to rape, she did not stop until the report was lodged in the police station on the same day. Therefore, the prosecution story cannot be doubted only on the ground that the time of lodging of FIR has not been mentioned because the incident is of 31/10/2008 and on that day itself, FIR was lodged in the police station.

9. The prosecutrix, in her testimony, has deposed that the day next to Diwali, she had gone to Village - Parsada for celebration and when she was returning alone from Village - Parsada to her own village at about 6 AM, on way, she was intercepted by the appellant who had come on bicycle and at that point of time, the appellant expressed his evil desire to have sexual intercourse with her. When the prosecutrix denied, she was forcefully lifted by the appellant and was taken to agricultural field. The prosecutrix has further stated that she cried for help and started weeping. Thereafter, she was subjected to rape by the appellant. Then she was taken back to the road and warned not to disclose it to anybody and then the appellant ran away from the spot. The prosecutrix has further stated that when she had come on the road and weeping, two residents - Dukalu and Nandlal approached and when they enquired, she disclosed them that she was ravished by the appellant and thereafter, Nandlal, Dukalu and other villagers came to her house and the Sarpanch - Deendayal Dewangan and elderly persons were involved and meeting was held in which, the appellant had come. He first denied then later on admitted having committed offence. Later on, FIR was lodged in the police station. In her cross examination, certain discrepancies with regard to the manner in which the incident happened were elicited. Learned counsel for the appellant argued that these contradictions with regard to the manner of commission of offence create reasonable doubt in so far as allegations of forcible sexual intercourse is concerned. He would further emphasize that if the testimony of the prosecutrix is to be believed, she was taken to the agricultural field, thrown on the field and then subjected her to rape. But this is not supported from the medical evidence because there were no injury found on any part of the body of the prosecutrix which is wholly improbable. He would further argue that even no injury was found on the private parts of the prosecutrix. Therefore, all these indicate that the prosecutrix was a consenting party and when she and the

appellant were found in compromising situation in the agricultural field by some of the villagers, a false story of rape was developed.

10. The contradictions and omissions which have been pointed out in the cross examination of the prosecutrix are not very material. The prosecutrix has clearly stated in her cross examination as to how she was taken to the field. She has denied that the incident did not happen. Nothing has been elicited as to why the prosecutrix would falsely implicate the appellant. Moreover, it is not a case of the prosecutrix that she was dragged in the agricultural field due to which, she sustained any injury. The prosecutrix was all alone and she was over powered by the appellant. Therefore, in such circumstances, the version of the prosecutrix cannot be disbelieved only on the ground that no injury was found on any part of her body. Moreover, the prosecutrix being a married lady and habitual to sexual intercourse, it is not necessary that prosecutrix must sustain any injury in or around her vagina. If the evidence of the prosecutrix is reliable and trustworthy, the same may be relied upon and conviction can be rested on her testimony, without looking for corroboration from the medical evidence. According to the evidence of Nandlal (PW2), he was informed of the incident by the prosecutrix, whom he found crying on the road. This means that soon after the incident, the prosecutrix disclosed about commission of offence to the first person who happened to be available near the spot. Therefore, conviction of the appellant does not warrant any interference. This appeal is accordingly dismissed.

It is placed on record that the appellant has already undergone the period of sentence awarded to him.

Sd/-
(Manindra Mohan Shrivastava)
Judge