

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 417 of 2012

Lemboo Nagesia, aged about 50 years, S/o. Late Chayeela Nagesia, R/o.
Village- Serangdag, P.S. - Kusmi, District – Sarguja (C.G.)

---- Appellant

Versus

State Of Chhattisgarh, Through : the Police Station – Kusmi, District –
Sarguja (C.G.)

-----Respondent

For Appellant : Mr. A.N. Bhakta, Advocate

For Respondent/State : Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

16/09/2017

Heard.

1. This appeal is preferred against the judgment of conviction and order of sentence dated 26.03.2012, passed in S.T. No.396/2010, by the Second Additional Sessions Judge, Ambikapur, District – Sarguja, whereby the appellant has been convicted for the offence under Section 376 (1) of Indian Penal Code and sentenced him to under go rigorous imprisonment of 7 years along with fine of Rs.1000 and in default of payment of fine, 1 month R.I. more.
2. Facts of the case in brief is that on 08.04.2010 at about 8.30 pm, the prosecutrix (P.W.-5) had consumed liquor and was in intoxicated condition, when appellant/accused came to her and by holding her

hand, took her forcefully towards the field and raped her. Prosecutrix remained with appellant for the whole night and in the morning, when she was relieved, she was going towards her mother's house, then she was brought back by her husband and a village meeting was called and thereafter, FIR (Ex.P/4) was lodged by her on 09.04.2010 in Police Station Kusmi.

3. On completion of investigation, the appellant was charge-sheeted. for the offences punishable under Section 376 of the Indian Penal Code. The appellant was charged for the offence under Section 376(1) of Indian Penal Code and on his denial of charges, he was tried and the impugned judgment was passed, in which the appellant stands convicted as aforesaid.
4. It is submitted by the counsel for the appellant that prosecutrix (P.W.-5) was a consenting party, this fact has been totally ignored by the trial Court. In cross-examination of the prosecutrix (P.W.-5), there are admission, which shows that prosecutrix willingly went with appellant and submitted to sexual intercourse with him. Hence, there is no case of rape as alleged by the prosecution because of which, the appellant is entitled for acquittal.
5. Counsel for the State opposed the submission made and submitted that the prosecution has proved its case beyond all reasonable doubt. It is further submitted that the discrepancies as pointed out by the counsel for the appellant are minor, which have no significance. Hence for these reasons, there is no ground to interfere with the impugned judgment.

6. I have heard the learned counsel for both the parties and perused all the documents placed on record.
7. Considering the grounds raised in this appeal, the arguments submitted and the evidence available on record, the issue arises for adjudication is, whether the conclusion arrived at by the trial Court is beyond reasonable doubt to support the conviction of the appellant under Section 376 (1) of the Indian Penal Code?
8. The case is based only on the statement of prosecutrix (P.W.-5). In her cross-examination, she has stated that on the date, time and place of incident, she was in intoxicated condition, when appellant came to her and holding her hand took her by pulling her towards *Peepal* tree, where he forcefully raped her. The appellant did not let her go in the whole night and allowed her to go in the morning. She was afraid to confront her husband and for this reason, she was going to her mother's house, when she met with her husband on the way then she narrated him about the incident. Thereafter, a village meeting was held and subsequent to that, FIR (Ex.P/4) was lodged. In cross-examination, she has admitted that when she was taken by the appellant, he had not tied her hands and also admitted that when appellant was taking her, he was walking in front of her and she was walking behind. Further there is admission that in the village meeting money was demanded from appellant and on his refusal, the villagers present in the meeting had said that since the appellant is not giving money, report be lodged.
9. Bariya (P.W.-6) is the husband of prosecutrix, who has stated that his wife did not return in the night of incident, he tried to search for

her and when he was going towards the house of in-laws, he saw his wife on the way, then she told him that appellant had raped her. Thereafter, he called a village meeting, subsequent to that his wife has lodged the report. In cross-examination, his statement has remained un rebutted. Witness of the incident Rajmohani (P.W.-1) has been declared hostile by the prosecution. Beerbalram (P.W.7) is the witness of village meeting and he has not made any statement in support of the prosecution.

10. Dr. Shashikala (P.W.-4) has examined prosecutrix (P.W.-5) and found abrasion on her right side of forehead, left leg, right elbow and one contusion on her knee. On examination of private parts, she did not find any injury and has opined that no opinion can be given regarding recent sexual intercourse as the person examined was habitual to sexual intercourse vide report Ex.P/3.
11. The case of the prosecution is totally depending on the statement of the prosecutrix (P.W.-5) and her statement has appeared to be shaky because of admission made by her in her cross-examination as well as in her examination in chief that she was under intoxicated condition and that after the incident, she was afraid to meet her husband, that suggests that she may have been a consenting party. Further the admission in the cross-examination that when she was being taken by the appellant/accused, she was walking behind him without there being any application of force to compel her to come with him, hence, for these reasons the statement of the proxecutrix (P.W.-5) does not inspire confidence, because of which, her statement could not have been made the only basis for convicting

the appellant/accused.

12. On the basis of the reasons aforementioned and after close scrutiny of evidence on record, it appears that conviction of the appellant is not based on cogent and reliable evidence of the prosecution. The impugned judgment of conviction is not sustainable, hence this appeal deserves to be allowed, this appeal is allowed. The impugned judgment is set-aside and the appellant is acquitted of the charge against him. The appellant is reported to be on bail, his bail bonds shall continue for a period of six months subject to the provisions of Section 437 Cr.P.C.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram