

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 28 of 2017**

- Ravindra Das Manikpuri S/o Laxman Das Manikpuri, Aged About 26 Years R/o Village Garanjihi, Police Station Vishrampur, Revenue & Civil District Kondagaon, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Vishrampur, District Kondagaon, Chhattisgarh.

---- Respondent

For Appellant	:	Shri PK Tulsyan, Advocate
For Respondent-State	:	Shri SRJ Jaiswal, P.L. for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****28/08/2017**

1. This appeal is against the judgment of conviction and sentence dated 24.11.2016 passed by the court of First Additional Sessions Judge, Kondagaon, in ST No.121/12 whereby the appellant has been convicted under Section 376 IPC and sentenced to undergo R.I. for 10 years with fine of Rs.1000/- and in absence of payment of fine amount additional R.I. for 2 months was ordered.
2. As per the prosecution case, on 22.05.2011, the appellant, who is the brother-in-law (Jija) of the victim on his cycle took the victim to a forest and in the forest she was forcefully subjected to rape. Subsequently, she made a report on that she disclosed the fact to her sister. Thereafter, she was subjected to medical examination and the prosecution after investigation

has filed the charge-sheet under Section 376 IPC.

3. During the course of trial, the appellant abjured the guilt and in his statement under Section 313 Cr.P.C. and contended that he has been falsely implicated. The trial Court after evaluating the statement of the witnesses i.e. the prosecutrix (PW-1), Dr. Kumud Kunwar (PW-6) and Dr. Govind Singh (PW-12), which was corroborated by the sister of the prosecutrix Purnima Bai (PW-9) convicted the appellant as aforesaid. Hence, this appeal.
4. Learned counsel for the appellant submits that the appellant has been falsely implicated. The prosecutrix being sister-in-law of the of the appellant was a consenting party to the incident, which can be evaluated from the statement of the prosecutrix and no injury marks were found over the body of the prosecutrix. Therefore, the appellant may be acquitted from the charges leveled against him.
5. Per contra, learned State counsel supports the judgment of the trial Court and submits that the order is well merited which do not call for any interference.
6. Perused the record of the court below. The prosecutrix was examined as PW-1. Narrating the incident she stated that before four days of the incident, she had been to the house of her brother-in-law as she was called by her sister, since the accused/appellant had to go for a training, as such she was asked to stay in their house along with her sister. When she was there, the appellant used to commit obscene activity with her and on complaining to the sister, the appellant used to control himself. Narrating the facts, the victim further stated that one night while the prosecutrix was sleeping inside the room, the appellant tried to outrage her modesty, when

she made a noise, he restrained himself and prayed for mercy. Subsequently, on the next day when the victim asked the appellant where is her sister, the appellant replied that her sister has gone to the forest and she has called the prosecutrix. She further stated that while she was going to her sister, the appellant followed her and while she was going along with her sister at that time the appellant again came on the cycle and tried to drag her sister at that time the prosecutrix tried to flee away. Subsequently, the appellant came on the cycle and thereafter took the prosecutrix on the cycle to the forest and committed forceful sexual intercourse. The prosecutrix disclosed the incident to her sister and family members, thereafter the report was made.

7. In the cross-examination nothing has been diluted with respect to the incident to hold that the prosecutrix was a consenting party. Though Ex.D/1, the statement made by the prosecutrix under Section 161 Cr.P.C. was confronted and certain omissions were pointed out but with respect to the incident no material contradiction or omission could be pointed out.
8. The statement of Dr. Kumud Kunwar (PW-6) would show that the victim was brought before her on 24.05.2011 for examination. On her examination, she found that the prosecutrix was subjected to recent rape. Report was given by Ex.P/14, however, no injury was found over the body of the victim. Dr. Govind Singh (PW-12) has performed the radiological test and the X-ray was given by Ex.P/17. According to this report, the age of the prosecutrix was found to be above 12 years and below 15 years. The radiologist, however, further stated that three years margin is allowed in such report and which can be either to be added or to be reduced. Therefore, evidence suggest that the victim had not attained the majority. The same has been established by the doctor as also by Ex.P/6, which is the mark-sheet of the

school.

9. The FIR in this case has been proved as Ex.P/1, which is lodged by the victim on 24.05.2011 for the incident happened on 22.05.2011. Perusal of the FIR would show that the narration of incident by the victim and the subsequent statement corroborate each other. The police had also prepared the map of the site, which is proved by Ex.P/2 and another map is also placed on record, which is marked as Ex.P/13, which has been exhibited by Subhash Chand Manikpuri (PW-5), who is the Patwari. Therefore, taking into the statement of the victim coupled with the statement of the doctors, which would show that the victim was subjected to forceful rape. Though the projection was made by the accused/appellant that there had been some family dispute, therefore, he has been falsely implicated do not find any support from the statement of the victim and no plausible examination has been given under Section 313 Cr.P.C. of the statement of the victim. Furthermore, the wife of the appellant Purnima Bai (PW-9) has also deposed against the appellant. Wherein, she stated that her husband had taken her sister to her maternal home at village Mundapar and in between the journey at village Garajidih forest, she was subjected to rape. Therefore, the statement of the victim that at the behest of her sister she had come to join her sister because her brother-in-law (Jija) was to go for a training, her presence in the house appears to be natural and the statement of the victim also supports the happening of the incident, which has also been proved by the doctors.

10. Consequently, the perusal of the order would show that the finding arrived at by the court below appears to be just and proper, therefore, the conviction of the appellant in respect of the offence under Section 376 IPC is upheld. The appellant appears to be in jail since 25.05.2011 and it shows that substantial

part of jail sentence has already been suffered by the accused. In facts of the case and in the opinion of this Court, taking into background of the case and nature of evidence on record, ends of justice would be subserved if the jail sentence is reduced to 7 years and the fine amount of Rs.1000/- is enhanced to Rs.10,000/-. In absence of payment of fine amount, the appellant shall further undergo R.I. for six months. It is stated that the appellant is in jail since 25.05.2011, therefore, he is required to undergo the remaining jail sentence.

11. With such observation, the appeal stands disposed off.

Sd/-

Goutam Bhaduri
Judge

Ashu