

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 829 of 2009**

Prakash Singh, S/o Laxman Singh, aged about 20 years, by
Occupation Autoworks, R/o Dumarkot, Thana-Charama, District-
Kanker (C.G.) **---- Appellant**

Versus

The State of Chhattisgarh, through Police Station- Korar, District- Uttar
Bastar Kanker (C.G.) **---- Respondent**

For Appellant : Mr. Parag Kotecha, Advocate.
For State/respondent : Mr. Vinod Kumar Tekam, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****06/12/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 08.10.2009 passed by Sessions Judge, Kanker District- North Bastar, Kanker (C.G.) in Session Trial No. 40/2009, wherein the said court convicted the appellant for commission of offence under Section 376 read with Section 511 of IPC, 1860 and sentenced to undergo R.I. for 5 years and fine of Rs. 1000/- with further default stipulations.
2. In the present case, prosecutrix is PW-1 who is aged about 9 years. As per version of the prosecution, on 02.03.2009 at about 6:45 p.m., the appellant asked the prosecutrix to come with him to road side and when she agreed, the appellant taken her to forest nursery and there he tried to commit rape on the prosecutrix. Matter was reported and investigated. The appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-
 - (i) No independent witness has been examined in the present case and the witnesses who have been examined, are relative of the prosecutrix, therefore, their version is not reliable.
 - (ii) The prosecutrix would have fallen on hard and blunt object, the injuries must have been occurred, but no injury was found on her body which shows that case of the prosecutrix is doubtful.
 - (iii) The trial court has ignored material contradiction and omission in the statement of the witnesses and recorded finding of conviction which is not liable to be sustained.
4. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. The prosecutrix (PW-1) deposed that the appellant asked her to accompany him towards road side and she had been taken to one forest nursery where the appellant made her lie down on surface and removed her cloth and underwear and tried to commit intercourse with her. On her cry, her sister namely Ganga Bai (PW-3) came there and the appellant flee away. Version of this witness is supported by version of Ram Singh Darro (PW-2), Ganga Bai (PW-3) & Kachro Bai (PW-4). All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

6. Version of direct evidence is supported by version of Dr. Sumit Dhruv (PW-9) who examined the prosecutrix and as per version of this witness, her hymen was not ruptured but damaged to surrounding tissue, abrasion and redness was also present. The medical expert opined that attempt to rape is committed with the prosecutrix and tissue of vaginal side was damaged. Version of medical expert is corroborative piece of evidence. Version of medical expert is unshaken during cross-examination and there is no other expert opinion contrary to the opinion of this medical expert.
7. The trial court after assessing the entire evidence came to conclusion that it is an offence of attempt to rape which is punishable under Section 376 read with Section 511 of IPC, 1860. After reassessing the entire evidence, this court has no reason to record contrary finding.

Heard on the point of sentence

8. The trial court awarded R.I. for 5 years which cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
9. It is reported that the appellant has suffered full jail sentence and has been released from jail on 31.12.2012 after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge