

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 93 of 2009****Reserved on : 12.10.2018****Delivered on : 30.10.2018**

Mohan Sahu, S/o Radheshyam Sahu, age 20 years, R/o Borsi,
Police Chowki Fingeshwar, Thana- Rajim, District- Raipur (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through the District Magistrate, Raipur (C.G.)

---- Respondent

For Appellant : Mr. Sachin Singh Rajput, Advocate.

For State/respondent : Mr. Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 24.12.20108 passed by Additional Sessions Judge Gariyaband, District- Raipur (C.G.) in Session Trial No. 33/2008, wherein the said court convicted the appellant for commission of offence under Section 376 of IPC and sentenced to R.I. for 10 years and fine of Rs. 1000/- with further default stipulations.
2. As per case of the prosecution, prior to 15 days of 12.07.2008, the prosecutrix who is mentally challenged girl went to flour mill of the appellant for grinding/ powdering of rice. The appellant taking advantage of loneliness, committed rape on her. When mother of the prosecutrix came to know about the incident, she intimated the same to her husband and brother and thereafter, the matter was reported to police. After

investigation, appellant was charge-sheeted and after trial, the trial court convicted the appellant as mentioned above.

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

(i) The prosecution has failed to prove that the prosecutrix is a mentally challenged girl. It could be a case of consent and no rape has been committed on the prosecutrix.

(ii) The evidence adduced by the prosecution are not reliable and the trial court has not appreciated the evidence in its true perspective.

(iii) The judgment passed by the trial court is contrary to the evidence on record and the same is liable to be reversed.

4. On the other hand, 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 she went to flour mill of the appellant for grinding of rice and at the same time, the appellant dragged her in nearby spot of flour mill and inserted his penis into her vagina and committed rape on her. Version of the prosecutrix was subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Story of physical relation of the prosecutrix with one Manju has tried to develop, but the same is irrelevant for decision of this case.

6. Though, the report is lodged after 15 days of the incident, but delay itself is not sufficient to throw overboard the entire case of the prosecution. Normally, the family members are reluctant in lodging the report which is against chastity of a woman of family and it may bring down their reputation in the eyes of people at large of the society. The delay is fatal only when it is occurred to concoct a different version after suppressing the truth. In the present case, the prosecutrix is firm in stating to her mother the incident and there is no grudge on the part of the family members against the appellant to rope him in false charge. In absence of indication of any fabrication of fact, delay in the present case is not fatal to the prosecution.
7. Now the point for consideration is whether the appellant has committed sexual intercourse with the prosecutrix and whether the same is without her consent and against her will. From evidence of the prosecutrix (PW-1), Dhaneshwari Bai (PW-2) who is mother of the prosecutrix, Heeralal (PW-3) who is father of the prosecutrix, it is established that rape was committed by the appellant on her. All the witnesses were subjected to cross-examination, but they were unshaken and there is nothing to discard their testimony. The prosecutrix is stable in her version since investigation of the case till her examination before the court below.
8. There is clear and cogent evidence of the prosecutrix to prove that there was penetration and as per law laid down by Hon'ble the Supreme Court in the matter of **Aman Kumar Vs.**

State of Haryana reported in **(2004) SCC 379**, act of the appellant falls within definition of rape as defined under Section 375 of IPC. There is no material contradiction or omission in the statement of the prosecutrix which go to the route of the case. Any minor contradiction which do not go to the route of the case are insignificant and the same is not adversely affect the case of the prosecution. There is no scope to say that it is a case of consent. For commission of offence punishable under Section 376 of IPC for which the trial court convicted the appellant, the same is not liable to be interfered with and conviction of the appellant is affirmed.

9. The trial court awarded jail sentence of 10 years for commission of offence under Section 376 of IPC 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.
10. The appellant is reported to be on bail and his bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 29th January, 2019.

Sd/-
(Ram Prasanna Sharma)
Judge