

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 331 of 2010

Judgment Reserved on 23-10-2018

Judgment delivered on 30-10-2018

- Sanjay s/o. Anjr Das Satnami, aged about 22 years, r/o. Village Motesara, Police Station Kunda, District Kabirdham (CG).

---- Appellant

Versus

- State of Chhattisgarh through PS Kunda, District Kabirdham (CG).

– Respondent

For Appellant	:	Mr. Bharat Raput, Advocate.
For Respondent/State	:	M. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 28-4-2010 passed by the Sessions Judge, Kabirdham (CG) in Sessions Trial No. 17 of 2008 wherein the said Court convicted the appellant for commission of offence under Section 376 (1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/- with default stipulations.

2. In the present case, prosecutrix is PW/6. As per version of persecution, on 5-1-2008 at about 12.00 am at noon when prosecutrix was all alone in her house, the appellant entered into her house and after throwing her on the ground committed rape on

her. Prosecutrix informed the incident to her family members and report was lodged on the same day at Police Station Kunda. The matter was investigated. After completion of the trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) The incident took place in an open and busy place at about 12.00 am at noon but no one has seen the incident which is practically impossible.
- ii) Then trial court overlooked the material contradictions and omissions in the statement of the prosecutrix and other witnesses which falsifies the story of the prosecution.
- iii) Version of the prosecutrix is not supported by the medical evidence which reveals that prosecutrix is a consenting party, therefore, finding arrived at by the trial Court is liable to be set aside.

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding of the trial

Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the lower court in which impugned judgment has been passed.

6. In the present case, date of incident is 5-1-2008 at about 12.00 a.m., at noon and report was lodged on the same day at Police Station Kunda at about 8.45 pm. Place of incident is village Motesara which is distance of 14 kms from Police Station Kunda where the report is lodged in which name of the appellant and his act of rape are clearly mentioned.

7. PW/1 prosecutrix deposed before the trial Court that in the day time at 12.00 am she was busy in clearing her house and she was all alone. As per version of this witness appellant entered into her house, caught hold her hand and thrashed her on ground and thereafter committed rape on her. Her parents returned to the house at about 3 -4 pm then she narrated the story to them and thereafter her father called the people of locality and informed them about the incident. Thereafter she went to Police Station Kunda and lodged report as per Ex.P/9 and signed in the report. Version of this witness is supported by version of PW7 Pancham, who is father of the prosecutrix,

Rajesh (PW/8), Babulal (PW/9) and Rajju (PW/10) to whom the incident was informed. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence.

8. It is settled law that minor contradictions and omissions which do not go to the root of the case are insignificant and same cannot be a ground for discarding the the testimonies of the prosecution witnesses. Causing injury during the course of incident on the body of the prosecutrix is also not necessary and therefore, her statement cannot be undervalued on this count. From the evidence of Dr. P.L. Kurre (PW/3), it is clear that the appellant is capable to perform intercourse. There is nothing on record to show that the appellant has been falsely implicated on account of any grudge. Again, the prosecutrix is firm in informing about the incident to family members and people of locality which shows that she was not consenting party. If she is consenting party, she would not have reported the matter and informed the same to people of locality which was against her chastity. This court has reassessed the entire evidence and has no reason to record contrary finding what is recorded by the trial Court.

9. On over-all assessment, it is established that the appellant committed rape on prosecutrix which is an offence punishable

under Section 376(1) of IPC for which the trial Court has convicted the appellant which is not liable to be interfered with by this court. Conviction of the appellant is hereby affirmed.

10. Heard on the point of sentence.

The Trial Court awarded minimum sentence to the appellant and less than minimum sentence cannot be awarded. . Sentence part is also not liable to be interfered with by this court.

11. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand cancelled. The trial Court will prepare super session warrant and issue warrant of arrest against him. After his arrest he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial Court to submit compliance report on or before 29th January, 2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju