

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.578 of 2006**

Narhar Verma, S/o. Itwari Ram Verma, aged about 32 years, R/o. Village Kodwa, Police Station Dharsiva, District Raipur (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through District Magistrate, District Raipur (CG)

---- Respondent

 For the appellant : Shri Shivendu Pandya, Advocate
 For the respondent/State: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****05.12.2018.**

1. This appeal is directed against the judgment dated 28.6.2006 passed by 12th Additional Sessions Judge (FTC), Raipur (CG) in Session Trial No.388/2005 wherein the said Court convicted the appellant for commission of offence under Sections 450, 376(1) & 506 Part-II of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 500/-; RI for seven years and to pay fine of R.500/-; RI for three years with default stipulations with a direction to run the sentences concurrently.

2. In the present case, prosecutrix is PW-2. As per the prosecution case, on the date of incident i.e. 17.9.2005 at about 11.30 pm prosecutrix was in her home along with her husband. The appellant knocked the door of her house, but she did not

open the door. After some time at about 1.30 am, the appellant entered into the house of the prosecutrix with knife in his hand and threatened the prosecutrix and her husband to kill them and thereafter caught hold the prosecutrix, threw her upon the bed and forcibly committed rape with her. The matter was investigated, the appellant was charge sheeted and convicted as mentioned above.

3. The appeal is filed on the following grounds:-

(i) Evidence of the prosecutrix is not corroborating with the evidence of her husband and other witnesses and independent witnesses have not supported the version of the prosecution and therefore, case of the prosecution is under cloud.

(ii) Story of rape is fabricated as husband of the prosecutrix was present in the same house. But the trial Court did not appreciate this important aspect of the matter. As per the version of the medical expert Dr. (Smt.) A. Bose (PW-1) she did not find any internal or external injury on the body of the prosecutrix, therefore version of the prosecution is not supported by the version of the medical expert.

(iii) Finding of the trial Court is based on the conjunctures which is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. Prosecutrix (PW-4) deposed before the trial Court that the appellant entered into her house with knife and threatened her and her husband. Thereafter her husband left the place and shifted to some other room. She further deposed that thereafter the appellant removed his pant and lifted her sari and thereafter committed rape on her. She further deposed that the appellant threatened her that if she will cry, he will kill her. Version of this witness is supported by the version of Karthik Ram Verma (PW-3) who was present in the same house and is the husband of the prosecutrix. Both the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence side. Version of these witness is supported by the version of Dr. (Smt.) A. Bose (PW-1) who found abrasion on both the breasts of the prosecutrix measuring 1 to 5 cm x 5 to 1.5 cm which was 3-4 days old. The expert examined the prosecutrix on 21.9.2005 at District Hospital Tatiband, Raipur and the date of incident was in the night of 17.9.2005. Version of the medical expert is supportive to the direct evidence of the prosecutrix. Again Dr. Sushil Sharma (PW-12) examined the appellant who found him capable to perform sexual intercourse. There is no other expert opinion contrary to the opinion of the both the medical experts and both the medical experts were unshaken during their cross-examination therefore, their version is reliable and the same is corroborative piece of evidence of the prosecutrix.

6. True it is that the report is lodged on 29.9.2005 i.e. delayed by 12 days. Prosecutrix is a married woman, she was fearful after the incident and after the support of the family she decided to lodge the report. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for delayed FIR. The delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

7. After assessing the evidence, this Court has no reason to hold that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of the prosecutrix and other witnesses. Again there is no material contradictions in the statement of the witnesses, prosecutrix and other witnesses. Minor contradictions which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the prosecution.

8. Considering the facts and circumstances of the case, the Court is of the view that the finding arrived at by the trial Court is based on proper marshaling of the evidence and this Court has no reason to record a contrary finding.

9. House trespass in order to commit offence punishable with imprisonment for life is an offence under Section 450 of IPC and rape is punishable under Section 376(1) of IPC and threat to kill with possession of knife is an offence under Section 506 IPC for which the trial Court has convicted and the sentenced the appellant and same is hereby affirmed.

10. Heard on the point of sentence.

The trial Court awarded RI for seven years for the offence under Section 376(1) of the IPC which is minimum prescribed for the offence. The sentence awarded to other offence are less than the minimum sentence for offence under Section 376(1) IPC which cannot be termed as harsh or unreasonable or disproportionate. Therefore, sentence part is not liable to be interfered with. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

11. Accordingly, the appeal is dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**