

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 119 of 2009**

Udesh Kumar, S/o Ratiram Thakur, aged about 22 years, R/o Pendra, Thana- Chhura, District- Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station - Chhura, District- Raipur (C.G.)

---- Respondent

For Appellant : None.

For State/respondent : Mr. Vinod Kumar Tekam, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

07/12/2018

1. Mr. Abdul Wahab Khan, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Mr. Subhash Yadav, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374 of the Code of Criminal Procedure, 1973 against judgment dated 29.01.2009 passed by Additional Sessions Judge, Gariyaband, District- Raipur (C.G.) in Session Trial No. 50/2008, wherein the said court convicted the appellant for commission of offence under Section 376 (1) of IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 500/- with further default stipulations.

3. In the present case, prosecutrix is PW-2. As per version of the prosecution, the prosecutrix was cleaning utensils at about 8:00 p.m. on 21.11.2008. At the same time, the appellant reached there, by pressing her mouth taken her to kitchen garden of one Kawal Singh, thereafter, removed her cloth and committed rape on her. Matter was reported and investigated. The appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
4. Learned counsel for the appellant submits as under:-
 - (i) The prosecutrix is deaf and dumb and her statement is recorded on the basis of indication of her mother which is doubtful.
 - (ii) Medical expert is not supporting version of the prosecutrix and the trial court has overlooked the material contradiction and omission in the statement of the prosecutrix, therefore, the finding arrived at by the trial court is liable to be reversed.
5. 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.
6. The prosecutrix (PW-2) deposed that the appellant forcibly taken her to kitchen garden and by pressing her mouth, made her lie down in surface, removed her underwear and thereafter committed rape on her. Version of this witness was

subjected to searching cross-examination, but she remained unshaken. No objection was raised at the time of recording statement of the prosecutrix that she is not competent witness, therefore, argument advanced on behalf of the appellant that the prosecutrix is not competent witness, is not tenable.

7. Version of the prosecutrix is supported by version of Hemin Bai (PW1), Hemsingh (PW-3), Krant Kumar (PW-4) and Vimla Bai (PW-6), who searched the prosecutrix when she was missing from the place of cleaning utensils and she informed that rape is committed by the appellant.
8. Version of direct evidence is supported by version of Dr. A.N. Toppo (PW-7). As per version of this witness, he noticed multiple abrasion on front of neck and front of chest measuring 1 - 2 cm. and two abrasion on soldier about 1 cm. x 0.5 cm. He again deposed that there is white discharge like semen outside of vagina of the prosecutrix. Her hymen was ruptured and there was swelling in vulva. Hymen was torn measuring 0.4 - 0.5 cm. This evidence is supportive piece of evidence. Again, Dr. I. Nageshwar Rao (PW-8) examined the appellant and found him capable of intercourse. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
9. The incident took place on 21.11.2008 and report was lodged on next date i.e. on 22.11.2008 at Police Station- Chhura.

Though, there is delay of one day in lodging report, but the fact remains, 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 little delayed FIR. The delay in 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 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.

10. After assessing the evidence, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. Considering all the facts and circumstances of the case, it appears that the trial court has evaluated the entire evidence elaborately and this Court has no reason to record contrary finding.

Heard on the point of sentence

11. The trial court awarded R.I. for 10 years which cannot be termed as harsh, disproportionate or unreasonable looking to

the facts and circumstances of the case 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.

12. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge