

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.496 of 2010**

Sujit Sarkar, S/o. Jagdish Sarkar, aged about 28 years, R/o.
P.V. 79 Bande, Police Station Bande, District North Bastar
Kanker (CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through the Police Station Bande,
Distt. North Bastar Kanker (CG)

---- Respondent

For the appellant : Shri Amit Kumar Sahu, Advocate

For the respondent/State: Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****11.12.2018.**

1. This appeal is directed against the judgment dated 09.7.2010 passed by Additional Sessions Judge (FTC), Bhanupratappur Distt. North Bastar Kanker (CG) in Session Trial No.96/2009 wherein the said Court convicted the appellant for commission of offence under Sections 376(1) and 323 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 500/-; RI for one years with default stipulations.

2. In the present case, prosecutrix is PW-2. As per the prosecution case, on 08.9.2009, the prosecutrix went to her field for the purpose of removing grass along with her nephew Amit. At about 11.30 am, Amit returned to the house for bringing lunch. Thereafter the appellant came there, caught hold her and when she tried to shout, the appellant put his hand on her mouth and

took her to nearby place by pulling and dragging. Thereafter he removed her sari and petticoat and committed sexual intercourse with her without her consent and against her will. When she returned to the field her husband was present there to whom she narrated the story where the appellant admitted his guilt and made negotiation with the husband of the prosecutrix that he should not report the matter. But when husband of the prosecutrix denied, the appellant assaulted him on his back by club. The matter was reported and investigated and after completion of the investigation, the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) As per the version of the prosecutrix the appellant put her twice on the ground but the medical examination of the prosecutrix shows that there is no injury on the person of the prosecutrix which makes the case of the prosecution doubtful.

(ii) Looking to the statement of the prosecutrix it is a case of consent but the trial Court overlooked this aspect of the matter.

(iii) Finding of the trial Court is not based of the evidence on record, therefore, the same 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. I have heard learned counsel for the parties and perused the record.

6. Prosecutrix (PW-2) deposed that on the date of incident, she was working in her field along with her nephew Amit. After some time Amit left the place for brining food and at the same time the appellant reached there and called her when she denied he caught hold her pressed her mouth dragged her and after removing her garments committed sexual intercourse with her without her consent and against her will. She further deposed that when she was returning, her husband reached there and the appellant also reached there and tried to make negotiation with her husband. But when her husband denied, the appellant assaulted him with club. This witness has been subjected to searching cross-examination but nothing could be elicited in favour of the appellant. Version of this witness is supported by the versions of Sushanto Mandal (PW-3) who is her husband and again it is supported by medical expert Dr. DS Nareri (PW-1) who examined the appellant and found him capable to commit intercourse. These witnesses have been subjected to seaching cross-examination but they were unshaken in their statements.

7. The statement of the prosecutrix is quite natural, inspire confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with

an injured witness and when her evidence is inspiring confidence, no corroboration is necessary.

8. In the present case date of incident is on 08.9.2009 and the matter was reported to the Police Station on the same day mentioning the name of the appellant as culprit and his act of rape and assault.

9. After reassessing 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.

10. Considering all the facts and circumstances of the case, the trial Court recorded a finding of conviction. This Court has no reason to record a contrary finding.

11. The offence of rape is punishable under Section 376(1) of IPC and voluntarily causing simple hurt is an offence punishable under Section 323 IPC for which the trial Court has convicted and the sentenced the appellant and same is hereby affirmed.

12. 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 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.

13. Accordingly, the appeal is dismissed.

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