

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 929 of 2009**

Samarudas, S/o Aalekh Das Mahant, aged about 30 years, R/o Raigarh Kabir Chowk, Police Chowki Jute Mill, Police Station Kotwali Raigarh, Presently R/o Jawahar Para, Police Station Champa, District- Janjgir-Champa (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through Police Station Schedule Caste & Schedule Tribe Welfare Janjgir, District- Janjgir-Champa (C.G.)

---- Respondent

For Appellant : None.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****11/12/2018**

1. Mr. Keshav Dewangan, Advocate has been engaged by the High Court Legal Aid 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. Bharat Rajput, 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 (2) of the Code of Criminal Procedure, 1973 against judgment dated 03.11.2009 passed by Special Sessions Judge, Janjgir-Champa, (C.G.) in Special Session Trial No. 106/2009, 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 7 years and fine of Rs. 2000/- with further default stipulations.

3. In the present case, prosecutrix is PW-7. As per version of the prosecution, the prosecutrix was working in one hotel namely Seven Hotel at Sakti. On 21.01.2009 at about 10:30 p.m. appellant caught hold the prosecutrix and forcibly committed sexual intercourse with her. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
4. This appeal is preferred on the following grounds :-
 - (i) There is one day delay in lodging the FIR and the same has not been explained properly, therefore, case of the prosecution is doubtful.
 - (ii) No internal or external injury was found on body of the prosecutrix which caused doubt on case of the prosecution.
 - (iii) There is material contradiction and omission in evidence of the prosecution witnesses, therefore, finding arrived at by the trial court is not sustainable and the same 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-7) deposed before the trial court that on the date of incident i.e. on 21.01.2009 at about 10:00 p.m.

when she had gone to her room to collect her cloth kept in almirah, the appellant entered in her room, pressed her mouth and committed forcibly sexual intercourse against her will and without her consent. Version of the prosecutrix (PW-7) is supported by version of Dr. B.P. Pandey (PW-2) who examined the appellant and found him capable to intercourse. Version of prosecutrix (PW-7) is also supported by Ghanshyam (PW-4) & Rohit Kumar (PW-5) who have informed about the incident by the prosecutrix. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Version of this witness is supported by FIR (Ex. P/5) which is lodged on next day of the incident i.e. on 22.01.2009 in which name of the appellant is mentioned as culprit and his act of rape is also mentioned.

7. There is no material contradiction and omission in the statement of the 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. The statement of the prosecutrix is quite natural, inspires 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.

9. It is true that there is one day delay in lodging 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 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. The trial court has elaborately discussed the entire evidence and after reassessing the evidence, this Court has no reason to record contrary finding. Commission of rape by the appellant is offence punishable under Section 376 (1) of IPC for which the trial court awarded the appellant with minimum imprisonment for 7 years and less than minimum cannot be awarded. Conviction of the appellant is hereby affirmed.

Heard on the point of sentence

11. The trial court awarded R.I. for 7 years which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence 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