

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 609 of 2009

Devlal S/o Shri Kunjalu Gond aged about 35 years, R/o Village – Borid, P.S. Fingeshwar, District Raipur (CG)

---- Appellant

Versus

State of Chhattisgarh, Through: Fingeshwar District Raipur (CG)

---- Respondent

For Appellant : Mr. M.K. Baeg, Advocate.

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

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA

JUDGMENT ON BOARD

10/12/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 25.3.2009, passed by the Additional Sessions Judge, Gariyaband, District Raipur(C.G.) in Session Trial No. 7/2009, wherein the said court has convicted the appellant for commission of offence under Sections 376 (1) of IPC and sentenced to undergo R.I. for 10 years and fine of Rs.500/- with default stipulation.
2. In the present case, prosecutrix is PW1. As per the case of prosecution, the prosecutrix is living in village Borid. On 29.10.2008, at about 3.00 pm the prosecutrix and her daughter in law Budhiyarini Bai were at home and her husband has gone to village Chingrau and her two sons were also not at home and they had gone to earn their livelihood. At the same time the appellant came into her home and asked her for bread when daughter in law of the prosecutrix went away from the house,

the appellant assaulted her sexually and raped her. On hearing her cries, her daughter in law reached there, the appellant ran away. The matter was reported and investigated and after completion of trial, the trial court convicted and sentenced and appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-
 - (i) The statements of the prosecution witnesses are contradictory and version of the prosecution is not reliable.
 - (ii) Ingredients of offence under Section 376 IPC is not made out. The trial Court has ignored the material contradictions and omissions, therefore, finding of the trial Court is liable to be reversed.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshalling of evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. I have heard learned counsel for the parties and perused the record of the trial Court.
6. Prosecutrix PW1 deposed that when no one was in her house, the appellant entered and removed her garments and committed sexual intercourse with her. When she cried for help daughter in law of the prosecutrix namely- Budhariyan Bai rushed there, who saw the incident and thereafter, the appellant ran away. Version of this witness is supported by the version of Budhayarin Bai (PW2) who has seen the incident. Again, it is

supported by the version of Rekhram (PW3), Mahesh Kumar (PW4), Ashok Kumar Sahu (PW5) and Smt. Nirmala Bai (PW6). Version of these witness is supported by the evidence of Dr. D.P. Kudeshiya (PW8), who examined the appellant and found him capable of doing intercourse. All these witnesses were subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

7. In the present case, date of incident is 29.10.2008 and FIR is lodged as per Ex.P1 at Police Station Fingeshwar next day i.e. 30.10.2008 in which name of the appellant is mentioned as culprit and his act is also mentioned.
8. Looking to the entire evidence, it is established that the appellant committed rape on the prosecutrix. There is no material contradictions in the statements of the prosecutrix, her daughter in law 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. 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 and when her evidence is inspiring confidence, no corroboration is necessary.

9. It is true that there is delay of 2 days in lodging the report at Police Station. When report is 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 delay of 2 days in lodging the FIR. The delay in a case of sexual assault cannot be equated with the case involving other offences. There are several factors in the mind of the prosecutrix 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 delay in lodging FIR. 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 false implicated. There is no reason to disbelieve the evidence of the prosecutrix. Considering all the facts and circumstances of the case, the trial Court opined that the appellant has committed rape against the prosecutrix. This Court has no reason to substitute a contrary finding.

11. Offence of rape is punishable under Section 376 (1) IPC, for which, the trial Court has convicted and sentenced the appellant and same is hereby affirmed.

12. Heard on the point of sentence:

The trial court has awarded jail sentence of R.I. for 10 years and fine of Rs.500/- for commission of offence under Section 376 (1) of IPC and looking to the gravity of the offence, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with.

13. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. It is reported that the appellant has suffered full term of his jail sentence and has been released, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
Judge