

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1085 of 2007

- Jeevan @ Raju son of Jaichand Lodhi, aged about 21 years, r/o. Village Surujpura, Police Station Saja, District Durg (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Saja, District Durg (CG).

---- Respondent

For Appellant	:	Mr. Atanu Ghosh Advocate appears as Amicus Curiae
For respondent/State	:	Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

05-12-2018

1. This appeal is preferred against the judgment of conviction and order of sentence dated 16-10-2007 passed by the Additional Sessions Judge, Bemetara, Session Division Durg, District Durg in Sessions Trial No. 341 of 2000 wherein the said Court has convicted the appellant for commission of offence under Sections 376(1) and 506-B of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.5,00/- and RI for two years with default stipulations.
2. In the present case, prosecutrix is PW/4. As per version of prosecution, prosecutrix went to her parental

house on the date of incident at about 11.00 a.m., and went to market on motor-cycle which was driven by her sister's son who is appellant for purchasing some goods. When she was returning to her parental house with the appellant, appellant forcibly caught hold her hand, fell her down on the ground and thereafter committed rape on her. After commission of offence he threatened her to kill if she will narrate the incident to anyone. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. It is submitted on behalf of the appellant as under:

- i) There is no eye witness account to the incident in support of version of the prosecutrix and the evidence of other witnesses is not dependable.
- ii The trial Court recorded the finding of conviction on surmises which is not sustainable.

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 marshalling 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 record of the court below in which impugned judgment is passed.

6. Prosecutrix (PW/4) deposed before the trial Court that she had gone to her parental house and thereafter she went to Saja market for purchasing some goods. While she was returning from market, the appellant provided lift to her on his motor-cycle and in the mid way he caught hold her hand, fell her down on the ground and then committed rape on her. Version of this witness is supported by version of PW/1 Ind Kunwar and PW/2 Jagdish to whom she narrated the incident. All these witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. Version of this witness is supported by first information report which is lodged on the next day of the incident i.e., 31-5-2000 in which name of the appellant is mentioned as culprit. It is also mentioned in the FIR that due to night, they did not lodge the report on the same day, but they lodged report on the next day.

7. 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.

8. It is true that there is delay of one day in lodging the report at Police Station. 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 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. 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,

9. Consideration all the facts and circumstances of the case, this court is of the view that the trial Court has

evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. Offence of rape is punishable under Section 376(1) of IPC and offence of threatening to kill is punishable under Section 506 Part II of IPC for which the trial Court has convicted the appellant as aforementioned and same is hereby affirmed.

10. Heard on the point of sentence.

The trial Court awarded RI for seven years for offence of rape under Section 376 (1) of IPC and RI for two years for offence of threatening to kill under Section 506 Part II of IPC . The trial Court awarded minimum sentence to the appellant for the offence under Section 376 (1) of IPC and less than minimum cannot be awarded.

11. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. It appears from the report of the Jail authorities that the appellant has suffered full term jail sentence. Therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju