

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 483 of 2009**

Suklal Sana S/o Natwar Sana, Caste Bengali, aged about 40 years, Occupation- Driver, R/o 18 Block Mana Camp Tahsil & District Raipur (CG)

---- Appellant

Versus

State Of Chhattisgarh Through Police Station Mana Camp, Mana, District Raipur (CG)

---- Respondent

For Appellant : None

For State/ Respondent : Shri Vivek Sharma, Govt. Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****14.11.2018**

1. Shri Prateek Sharma and Ms. Sunita Jain, Advocates have been engaged by the appellant for arguing the case on his behalf. Despite repeated calls, they have not appeared when the case is called out for final hearing, therefore, Ms. Sangita Mishra, 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 against the judgment of conviction and order of sentence dated 13.1.2009, passed by the 9th Additional Sessions Judge (FTC), Raipur (CG) in S.T. No. 117/2008, wherein the said Court has convicted the appellant under Sections 376, 454

and 506 Part-II of the IPC and sentenced to undergo R.I. for 10 years and fine of Rs.5,000/-; R.I. for 3 years and fine of Rs.500/- and R.I. for 3 years and fine of Rs.200/- with default stipulation. All the sentences were directed to run concurrently.

3. In the present case, prosecutrix is PW1. As per version of the prosecutrix, on the date of incident she was all alone in the house while her mother and father were out for their work, at the same time, the appellant entered into her house and pressed her mouth and lied over her and committed rape on her. When her mother and father returned from their work, she narrated the incident of rape to them. Thereafter, her father slapped the appellant for his wrong committed by him and report was lodged at the Police Station. Version of this witness is supported by the version of Parimal Rai (PW2), her father, who has supported the version of the prosecutrix. Smt. Shobha Rai (PW3) is mother of the prosecutrix and she has also supported the version of the prosecutrix. Again, version of the prosecutrix is supported by the version of Reena Sarkar (PW5) who asked the prosecutrix while she was weeping and in a question put to her by this witness, she replied that the appellant has committed rape on her. Again, version of the prosecutrix is supported by the version of Shivani Malik (PW9) and Bhimdas (PW6) who have been informed regarding the incident against the prosecutrix. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Looking to the

entire evidence there is no material contradiction in the statement of any of the witness which goes against the prosecution and the root of the case. It is a settled law that minor contradictions are not sufficient to discard the story of the prosecution, therefore, looking to the ample evidence it is established that the appellant had committed rape on the prosecutrix.

4. From the statement of Dr. Shishir Agrawal (PW12) it is established that Ossification Test of the prosecutrix was conducted in which age of the prosecutrix was found 14 to 16 ½ years. As per version of Police Inspector, J.P. Dubey (PW15), undergarment article 'A' and vaginal swab of the prosecutrix was seized as per Ex. D1 and D2 and same was sent to Forensic Science Laboratory for examination and as per FSL report Ex. P21, semen was found on the undergarment and slide of the prosecutrix which is corroborating the evidence of rape. Dr. Amita Jha (PW7) who examined the prosecutrix opined that rape was committed on the prosecutrix. Dr. D.K. Jha (PW4) who examined the appellant opined that he was physically fit to perform sexual intercourse.
5. In the present case, date of incident is 23.4.2008 and report was lodged on the same day at Police Station Mana naming the appellant as culprit, which is also a corroborative piece of evidence. Looking to the direct evidence, medical evidence and documentary evidence, the trial Court came to the conclusion that the appellant committed rape on the prosecutrix which is an offence punishable

under Section 376 (1) of the IPC. Again, house breaking/lurking house trespass is an offence under Section 454 IPC for which the trial Court has convicted the appellant and this Court has no reason to record a contrary finding because reasoning of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material. Accordingly, the conviction of the appellant for commission of offence under Sections 376 (1) and 454 IPC is hereby affirmed.

6. From the statement of the prosecutrix, it is established that the appellant threatened her that she should not tell the incident to anybody, but threat was not regarding death or grievous hurt, therefore, charge under Section 506 Part-II IPC is not made out. The finding of the trial Court regarding offence under Section 506 Part II IPC is not sustainable and the same is hereby set aside and the appellant is acquitted of the said charge.

7. **Heard on the point of sentence.**

The trial Court has awarded sentence for R.I. for 10 years under Section 376 (1) IPC; R.I. for 3 years under Section 454 IPC which cannot be termed as harsh or disproportionate or unreasonable looking to the facts and circumstances of the case. The sentence part is also not liable to be interfered with. Accordingly, the appeal filed for conviction and sentence under Sections 376(1) and 454 IPC is hereby dismissed.

8. It is reported that the appellant has suffered full term of his jail sentence and has been released from Central Jail, Raipur, after getting remission, therefore, no order for arrest etc. of the appellant is required.

Sd/

(Ram Prasanna Sharma)

JUDGE

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