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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.216 of 2011**

Bhaiya Lal, S/o. of Ramnath, aged about 24 years,
Occupation Agriculturist, R/o. Village Gadbad, PS
Baikunthpur, Distt. Korla (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through Police Station Baikunthpur,
Distt. Korla (CG)

---- Respondent

AND**Criminal Appeal No.402 of 2009**

Jamuna Prasad, S/o. Shri Ahibaran, Aged about 26 years,
Village Gadbad, PS Baikunthpur, Distt. Korla (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through Police Station Baikunthpur,
Distt. Korla (CG)

---- Respondent

For the appellants :Shri TK Tiwari, Advocate
For the respondent/State: Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****14.12.2018.**

1. Smt. Hamida Siddiqui, Advocate and Shri Maneesh Sharma, Advocate have been engaged by the respective appellants, but despite repeated calls, none appeared, therefore, Shri TK Tiwari, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellants.

2. As both the above appeals arise out of common judgment, both are heard and decided by a common judgment.

3. These appeals are directed against judgment dated 13.5.2009 passed by Sessions Judge, Korla, Baikunthpur (CG) in Session Trial No.137/2007 wherein the said Court convicted both the appellants for commission of offence under Sections 376(2)(g) and 506 Part II of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of 500/-; RI for one year respectively with default stipulations.

4. In the present case, prosecutrix is PW-1. As per the version of the prosecution, prosecutrix is the daughter of Ramdayal (PW-4) and Kewalavati (PW-3). On 06.10.2007 in village Dodibahara one Ramnarayan invited the family of the prosecutrix for some function and the family of the prosecutrix went to the village to attend the function. In the instance of Ramnarayan, prosecutrix was stayed back in the house of the Ramnarayan. In the night when the prosecutrix was washing her hands and legs, both the appellants along with one Vikki came there and closed the mouth of the prosecutrix and took her to the Primary School of the village where appellant Bhaiya Lal committed rape on her. The matter was reported and investigated and the appellants were charge sheeted and convicted as mentioned above.

5. Learned counsel for the appellants submits that independent witness namely Kumari Janki (PW-5) has not

supported the version of the prosecution but the trial Court has overlooked this aspect of the matter. The trial Court has failed to consider the material contradictions and omission in the statements of the prosecution witnesses and came to a conclusion on the basis of conjectures which is not liable to be sustained. The medical evidence does not corroborate with the probable story given by the prosecutrix, therefore, version of the prosecution is doubtful.

6. 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.

7. I have heard learned counsel for the parties and perused the record.

8. Prosecutrix (PW-1) deposed before the trial Court that she went to the house of one Ramnarayan with her parents and at the instance of Ramnarayan, she stayed back there for helping in cooking and other works. At night when she was washing utensils in front of the house of Ramnarayan, both the appellants along with one Vikki came there and appellant Jamuna Prasad put cloth (dupatta) on her mouth and they took her to the Primary School of village Dodibahara. When she cried for help, the appellants threatened her by showing knife and thereafter appellant Bhaiyalal committed rape on her. Version of this witness is supported by the

version of Smt. Kewlawati (PW-3) & Ramdayal (PW-4) who are the parents of the prosecutrix to whom she narrated the incident. Again it is supported by Smt. Kalawati (PW-8) to whom the incident was informed. Version of these witnesses is supported by the version of Dr. SK Gupta (PW-13) who examined the appellant Bhaiyalal and found him capable to intercourse. All these witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence. Version of the medical evidence is unshaken and there is no other medical opinion of the medical expert contrary to that. From the statements of all these witnesses it is established before the trial Court that both the appellants have acted in furtherance of common intention of rape and both have participated in commission of crime.

9. 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.

10. In the present case date of incident was in the intervening night of 06.10.2007 and 07.10.2007 and the report was lodged in the morning of 07.10.2007 at Police Station Baikunthpur in which

both the appellants were named as culprits and their act of rape was also mentioned.

11. 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.

12. After reassessing the evidence, this court has no reason to say that the appellants have been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix.

13. The trial Court has evaluated the evidence elaborately and considering the facts and circumstances of the case the trial court recorded a finding of guilt and this court has no reason to substitute a contrary finding.

14. Offence of gang rape is punishable under Section 376(2)(g) of IPC and the offence of threatening to kill is punishable under Section 506 Part II IPC for which the trial Court has convicted the appellants and same is hereby affirmed.

15. Heard on the point of sentence.

The trial Court awarded RI for ten years for offence of gang rape under Section 376 (2) (g) of IPC and RI for one year for offence Section 506 Part II of IPC which is minimum prescribed for the offence of gang rape. Less than the minimum cannot be

awarded, therefore, sentence part is not liable to be interfered with.

16. Accordingly, the appeals being devoid of merits are liable to be and are hereby dismissed. As per the report, the appellants have been released from jail after serving the full jail sentence awarded to them and after remission granted to them by the jail authorities. In view of this no further order is required for their arrest.

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