

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.100 of 2011**

Chhotu @ Naresh @ Umesh S/o. Nandu Yadav, aged about 21 years, Occupation Labourer R/o. Village Station Maroda, Police Station Navai, Distt. Durg (CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through Police Station Navai, Distt. Durg (CG)

---- Respondent

For the appellant :Shri Tarun Dansena, Advocate
For the respondent/State: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****10.12.2018.**

1. This appeal is directed against the judgment dated 31.12.2010 passed by Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act 1989') Durg (CG) in Special Session Trial No.35/2009 wherein the said Court convicted the appellant for commission of offence under Sections 376(1) & 342 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 500/-; RI for six months with default stipulations.

2. In the present case, prosecutrix is PW-1. As per the prosecution case, prosecutrix along with her parents residing at Sangam Chowk, Maroda which is within the jurisdiction of Police Station Navai, Distt. Durg. On the date of incident i.e. 29.6.2009

prosecutrix and her younger brother namely Durgesh were playing hide and seek at 5.00 pm. When the prosecutrix was hiding in a room, the appellant came there, caught hold the prosecutrix and dragged her towards water tank. When the brother of the prosecutrix came there, the appellant threatened him and thereafter the appellant took the prosecutrix to vacant house of Govind Dewangan and committed rape on her. Thereafter he forcibly confined the prosecutrix till 12.00 night. The matter was reported and investigated, and after completion of the trial, the appellant has been convicted as mentioned above.

3. Learned counsel for the appellant submits that there are number of contradictions and discrepancies in the statements of the prosecution witnesses and there was substantial development in their statement but the trial Court overlooked the same. Version of the prosecutrix and her brother is also not natural. No external or internal injury was found on the person of the prosecutrix, no FSL report is available on record, therefore, finding arrived at by the trial Court is liable to be set aside.

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 marshaling 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 the record.

6. Prosecutrix (PW-1) deposed that on the date of incident about 5.00 in the evening she along with her brother were playing the game of hide and seek, at that time, the appellant came there, caught hold the prosecutrix and dragged her to a house near water tank and committed rape with her. She further deposed that the appellant confined her in the said room up to late night. Version of this witness is supported by version of Durgesh (PW-2) in whose presence the appellant taken the prosecutrix. Again it is supported by the version of Neelam Kumar Banjare (PW-3) who is the father of the prosecutrix to whom the prosecutrix informed about the incident. Again it is supported by the version of Dr. IK Wadhwani (PW-7) who conducted the examination of the appellant and found him capable to do intercourse. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the appellant. Version of these witnesses again supported by the FIR (Ex-P/1) which was lodged on the next date of incident in which the name of the appellant was mentioned as culprit and the act of rape is mentioned.

7. The statement of the prosecutrix is quite natural, inspire 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.

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 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.

9. After reassessing the evidence, this Court has no reason to hold that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of the prosecutrix and other witnesses.

10. The trial Court has evaluated the evidence elaborately and this Court has no reason to substitute a contrary finding. The offence of rape is punishable under Section 376(1) of IPC and wrongful confinement is punishable under Section 342 IPC for

which the trial Court has convicted the appellant and same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded RI for seven years for the offence under Section 376(1) of the IPC which is minimum prescribed for the offence. Less than the minimum cannot be awarded, therefore, sentence part is not liable to be interfered with. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

12. Accordingly, the appeal is dismissed.

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