

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 160 of 2010

Judgment Reserved on 5-9-2018

Judgment delivered on 11-10-2018

- Suresh Dadsena S/o Shri Tiku Ram Dadsena aged about 21 years, R/o Village Nimohi, Thana Dabhra, District Janjgir -Champa (CG).

---- Appellant.

Versus

- State of Chhattisgarh through District Magistrate, Janjgir District Janjgir-Champa (CG).

---- Respondent

For Appellant	:	Mr. Surfaraj Khan, Advocate.
For Respondent/State	:	Mr. Sanjeev Pandey, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 18-2-2010 passed by Additional Sessions Judge, Sakti, Session Division Janjgir-Champa (CG) in Sessions Trial No. 166 of 2009 wherein the said Court convicted the appellant for the commission of offence under Section 376 (1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/- with default stipulations.

2. In the present case, prosecutrix is PW/1. As per version of the prosecution, parents of the prosecutrix were not present in their house on 15-4-2009 as they went to village Daaraama.. On that

day in the mid-night at about 12.00 pm prosecutrix was sleeping along with her younger sister namely Rakhi (PW/5) on the cot where the appellant entered the house by forcefully thrashing the door, gagged the mouth of the prosecutrix and committed rape on her. Prosecutrix narrated the incident to villagers of her village Nimohi and thereafter the report was lodged on the next day morning i.e., on 16-4-2009. The matter was investigated. After completion of the trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) As per version of prosecutrix (PW/1) she was sleeping with her younger sister namely Rakhi (PW/5) and the appellant committed rape on her on the same cot which is not possible and the story becomes doubtful. Even otherwise, it seems to be a case of consent.
- ii) Version of the prosecutrix is not supported by the version of medical evidence of Dr. Smt. Shashikala Miri (PW/8) who has not given any definite opinion.
- lii) The trial Court has erred in appreciating the age of

the prosecutrix.

- iv) The trial Court has not evaluated the evidence of PW/9 Boondram, PW/4 Jagatram, PW/10 Rathmati, PW/13 Gorakh, PW/17 Lalith and PW/14 Paluram who have not supported the version of the prosecution, therefore, the finding of the the trial Court is liable to be reversed.

He placed reliance on the decisions of Hon'ble High Court of MP and CG in the matter of **Jeev Rakhan vs. State of MP, reported in 2004 (III) MANISA 100 (MP), Madan Lal vs. State of CG, reported in 2007 (1) MPHT 42 (CG) and Mukesh Kumar vs. State of CG, reported in 2007 (III) MANISA 72 (CG).**

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.

5. In the present case, date of incident is 15-4-2009 at midnight and report was lodged on the next day morning ie., 16-4-2009. The place of incident is village Nimohi which is situated

at the distance of 8 kms from Police Station Dabhra where the report is lodged by the prosecutrix in which name of the appellant is mentioned as culprit. Prosecutrix deposed that she was sleeping on the cot along with her younger sister namely Rakhi (PW/5) in her house which is situated at village Nimohi and at 12.00 pm the appellant entered into her house, firstly he removed his dress and thereafter he torned her clothes. She further deposed that one knife was shown by the appellant at the time of incident and thereafter he committed rape on her by inserting penis into her vagina. When she pushed her sister with her leg she woke up and started crying at his brother and thereafter the appellant fled away from the spot. As per version of this witness, appellant left his full pant and knife in her house. Just after the incident her brother Mohan Lal (PW/3) came there and people of the locality namely Jagatram, Boondram, Gorakh were also called there and thereafter the matter was reported to Police Station. Version of this witness is supported by version of Ku. Rakhi (PW/5). As per version of this witness, when leg and hand of the prosecutrix touched her body, she woke up and saw the appellant lying over her sister who is prosecutrix. Both the witnesses have stated that full pant and belt of the appellant were left in their house.

6. As per version of (PW/16) G.B. Sahu, Investigating Officer, Sub Inspector, he seized full pant of the appellant from the house of the prosecutrix. Both the witnesses have been subjected to cross examination but nothing could be elicited in favour of the defence. Dr. G.S. Miri (PW/15) examined the appellant and found that the appellant was capable to perform sexual intercourse. Dr. Smt. Shashiikala (PW/8) who examined the prosecutrix found her hymen ruptured.

7. Now the point for consideration is whether it is the case of consent. When prosecutrix was sleeping in her house, the appellant entered into her house by thrashing the door, therefore, there is no scope to say that the appellant entered into the house at mid night due to any call by any one. The act of the appellant is intentional and forceful. From the evidence of the prosecutrix, it is clearly established that the appellant committed sexual intercourse with her without her consent and against her will. Version of prosecutrix is supported by the direct evidence of Ku. Rakhi (PW/5). It is not the case where the prosecutrix has moved any where of her own will with the appellant, therefore, the act of the appellant is not an act of consent and, therefore, his act is rape as defined in Section 375 of the IPC. Version of prosecutrix and Ku.Rakhi (PW/5) is supported by version of PW/2 Sita Bai and Mohan Lal (PW/3) who are mother and brother of the

prosecutrix and there is no reason to disbelieve the statement of these witnesses who are firm even after searching cross-examination.

8. True it is that PW/9 Boondram, PW/4 Jagatram, PW/10 Rathmati PW11 Teekaram and PW/12 Paluram have not supported the version of the prosecution but they are not witnesses of the incident. Offence of rape is committed in secrecy and these witnesses assisted during investigation after lodging of the FIR. If these witnesses are not the real witnesses of the incident, their version is not adversely affecting the case of the prosecution. Argument advanced on behalf of the appellant is not sustainable.

9. Considering all the facts and material on record, this court is of the view that the case laws cited by learned counsel for the appellant are clearly distinguishable from the facts of the present case.

10. From the statement of the prosecutrix, other supportive piece of evidence and the evidence of medical expert, it is clearly established the guilt of the appellant which is punishable under Section 376 (1) of the IPC for which the trial Court has convicted the appellant and the same is hereby affirmed. The trial Court awarded the minimum sentence and less than minimum

sentence cannot be awarded. Sentence part is also not liable to be interfered with.

11. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand cancelled. The trial Court will prepare super session warrant and issue warrant of arrest against him. After his arrest he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial Court to submit compliance report on or before 11th January, 2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju