

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 493 of 2010

Judgment reserved on 12-10-2018

Judgment delivered on 30-10-2018

- Dinesh s/o. Hirachand Ram, aged about 19 years, occupation Agriculturist, r/o. Village Kanakpur, PS Ramanujganj, Distt. Sarguja (CG).

---- Appellant

Versus

- State of Chhattisgarh through PS Ramanujganj, Dist. Sarguja (CG).

– Respondent

For Appellant	:	Mr. Arun Shukla, Advocate.
For Respondent/State	:	Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 17-6-2010 passed by the Additional Sessions Judge (FTC), Ramanuijganj, District Surguja (CG) in Sessions Trial No. 178 of 2008 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.100/- with default stipulations.

2. In the present case, prosecutrix is PW/1. As per case of the prosecution, the appellant committed rape on prosecutrix since two years from 26-4-2008. It is further case of the

prosecution that on being asked by the prosecutrix, appellant did not marry with her, that is why report was lodged. 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) Prosecutrix is a major lady and as per her version she is wife of the appellant and both have made physical relation for more than one occasion, therefore, it is not a case of rape as defined under Section 375 of IPC.
- ii) When it is admitted by the prosecutrix that she married with the appellant, there is no circumstance to promise to marry by the appellant with the prosecutrix and prosecutrix believed on that promise.
- iii) It is well known to the prosecutrix that if appellant marries with her, then she will become second wife of the appellant and she admitted this fact before the trial Court, therefore, charge under Section 376(1) is not established.

- iv) As per version of prosecutrix, she stayed with the appellant for one month in his house and when some hot talks took place with first wife of the appellant, then she left the house of the appellant which shows that the appellant has not ousted her from his house, therefore, finding of the trial Court is not sustainable.

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. I have heard learned counsel for the parties and perused the record of the lower court in which impugned judgment has been passed.

6. It is settled law that conviction in a case of rape can be based solely on the statement of the prosecutrix, but it is also settled that the evidence of the prosecutrix should be of sterling quality. As per version of prosecutrix (PW/1), appellant made physical relation with her for more than occasion that is why she conceived from the appellant and gave birth to a child. She admitted in her cross examination (para 4) that she married with the appellant on 4-3-2008 where people of locality were present.

She further deposed that she lives as a married woman and applies vermilion on her forehead in the name of the appellant. As per version of this witness, appellant is her husband, that is why she is living life of a married woman. From her statement, it is clear that (para 5) that when the appellant did not allow her to stay with him, then only she reported the matter to police authorities. From her statement it is clear that if appellant would have allowed the prosecutrix to stay with him, she would not have reported the matter to police authorities.

7. Looking to the entire version of the prosecutrix and circumstances of the case, it is unsafe to record a finding that physical relation maintained by both sides is against will of the prosecutrix and without her consent. Corroborative piece of evidence could be looked into only when statement of prosecutrix inspired confidence but that is not the case here. Looking to the evidence, it is not a case of rape as defined under Section 375 of IPC for which the trial Court convicted the appellant. Finding of the trial Court is not sustainable, therefore, the same deserves to be set aside.

8. Accordingly, the appeal is allowed. Conviction of the appellant under Section 376(1) of IPC is hereby set aside. He is acquitted of the said charge. The appellant is reported to be on

bail. His bail bonds shall continue for a period of six months in view of Section 437-A of Cr.P.C. Fine amount, if paid, be returned to the appellant.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju