

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 93 of 2010

Judgment Reserved on 25-9-2018

Judgment delivered on 11-10-2018

- Dularu Singh s/o. Moolchand Verma, aged 35 years, r/o. Baiji, Police Station Bemetaqra, District Durg (CG).

---- Appellant.

Versus

- state of Chhattisgarh through the Station House Officer, Police Station Bemetara, District Durg (CG).

---- Respondent

For Appellant	:	Mr. Vishnu Koshta, Advocate.
For Respondent/State	:	Ms. K. Tripti Rao, 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 28-1-2010 passed by Additional Sessions Judge, Bemetara, District Durg (CG) in Sessions Trial No. 47 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.500/- with default stipulations.

2. In the present case, prosecutrix is PW/1. It is alleged by the prosecution that on 31-10-2009 at about 5.00 pm prosecutrix was cutting grass in her field and at the same time appellant reached

there and committed forcible sexual intercourse with her after throwing her on the surface against her will and against her consent. The matter was reported and 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) It is stated by the prosecutrix that she informed the incident to Dinesh and Dariya but they have not been examined by the prosecution, therefore, version of the prosecution is doubtful.
- ii) Report is lodged after three days of the incident and no explanation is given by the prosecution for delayed FIR, therefore, version of the prosecution is not reliable.
- lii) As per version of Dr. Rajshee Deodhar (PW/6), one of the injuries found on the body of the victim may be self-inflicted, therefore, injuries found on the body of the victim has no bearing with the crime in question.
- iv) As per version of prosecutrix, she resisted the

appellant during the incident and caused abrasion on the face of the appellant, but no abrasion was found on the body of the appellant as per version of Dr. A.M. Shrivastava (PW/11) who examined the appellant, therefore, version of prosecutrix is not reliable.

- v) Corroborative piece of evidence is also not reliable, therefore, finding arrived at by the trial Court is liable to be reversed.

He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Narendra Kumar Vs. State (NCT of Delhi)**, reported in AIR 2012 SC 2281.

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. To substantiate the charge, prosecution examined as many as 12 witnesses. PW/1 prosecutrix deposed that on the date of incident she was cutting grass in her field at about 5.00 pm, and at the same time, appellant reached there and snatched sickle

from her hand and asked her to submit, when she denied the appellant forcibly threw her on the surface and committed rape on her. As per version of this witness, her bangles were broken during course of incident and the same was seized by the Police during investigation. This witness has been subjected to searching cross-examination but nothing could be elicited in favour of the defence side. This witness is firm about the incident and her version is supported by FIR (Ex.P/1) recorded at her instance in which name of the appellant has been mentioned as culprit. She is firm to her previous statement recorded under Section 161 of the Cr.P.C. Version of prosecutrix is supported by the version of her husband namely Mahesh Vema (PW/2). As per version of this witness he went to village Jiya to see his mother-in-law who was ill and stayed there for three days. When he returned to his village, his wife informed him about the incident. After hearing the incident, he informed the same to his father namely Manglu Verma and thereafter report was lodged. Version of this witness is supported by version of Manglu Verma (PW/3) who is father of Mahesh Verma and father-in-law of the prosecutrix. Again version of Mahesh Verma is supported by the statement of PW/4 Aarti Das, Kotwar. Statement of Manglu (PW/9) is supportive piece of evidence. As per version of this witness, broken bangles were seized from the spot and at the

place of incident, crops were smashed. Direct evidence of the prosecution is supported by the medical evidence.

6. Dr. Rajshee Deodhar (PW/6) examined the prosecutrix on 4-10-2009 at about 12.15 pm at Community Health Centre, Bemetara and noticed the following injuries on her body.

- I) Abrasion in the size of 5 cm long and .5 cm width below scapula lateral to mid-line.
- ii) Abrasion in the size of 2cm long above left breast.
- lii) Abrasion in the size of 2 cm long on middle part of left ring finger on palmar aspect.
- iv) Abrasion in the size of 1 cm palmar aspect of left index in lower part.

All injuries are simple in nature caused by hard and rough object.

7. Injuries found on the back, chest and fingers of the prosecutrix supporting the version of the prosecutrix show that violence was committed on her and she has been subjected to forcible intercourse without her consent and against her will.

8. True it is that though Dinesh and Dariya to whom the prosecutrix narrated the story have not been examined, but the same is not fatal to the prosecution looking to the entire evidence on record. Offence of rape is normally committed in place of secrecy, therefore, the evidence of prosecutrix is having decisive value but other piece of evidence is only supporting piece of

prosecution. Statement of prosecutrix itself is sufficient to bring home the guilt if the same is of sterling quality. In the present case, statement of the prosecutrix is wholly reliable because her version is supported by other evidence and the evidence of medical expert. Statement of other witnesses to whom the incident is informed is only hearsay evidence and same is not material evidence, therefore, it cannot be said that in the present case, material witnesses have not been examined.

9. It is contended on behalf of the appellant that delay of three days in lodging the FIR is not explained by the prosecution. In the present case, from the statement of Mahesh Verma, who is husband of the prosecutrix, it is clear that he had gone to other village for three days to see his mother-in-law who was ill and when he returned to his house incident was informed to him by his wife and then decision to lodge the report is taken by them. True it is that there is 3 days delay in lodging the FIR. Case of sexual assault is dealt by the Hon'ble Apex court in the matter of **State of Himachal Pradesh vs. Presi Singh, reported in (2009) 1 SCC 420** and it was held as under:

“6.....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 in 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. In the score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction”.

10. Further, it has been held by the Hon'ble Apex Court in the matter of **OM Prakash v. State of Haryana (2011) 14 SCC 309**.

“ 18. There is some delay in lodging the FIR but the delay has been well explained. A young girl who has undergone the trauma of rape is likely to be reluctant in describing those events to anybody including her family members. The moment she told her parents, the report was lodged with the police without any delay. Once a reasonable explanation is rendered by the prosecution then mere delay in lodging of a first information report would not necessarily prove fatal to the case of the prosecution”.

Looking to the entire evidence, delay of 3 days in lodging the FIR is not fatal to the prosecution.

11. It is contended on behalf of the appellant that no injuries were found on th face of the appellant while prosecutrix deposed

that she resisted during the incident and caused injury on the face of the appellant. In view of this court it is not necessary that injuries must be found on the body of aggressor. The only issue is whether she resisted during the incident. Looking to the injuries found on the body of the prosecutrix it is clear that she resisted during the incident that is why she sustained injuries on her back, chest and fingers, therefore, argument on this count is not sustainable.

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

13. 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 and sentenced 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.

14. 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