

HIGH COURT OF CHHATTISGARH, BILASPUR

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

Reserved on 3-10-2018

Delivered on 29-10-2018

CRA No. 178 of 2010

- Radhekrishna Jaiswal @ Radheshyam s/o. Kanti Prasad Jaiswal, aged 38 years r/o. Village Bhaiswar, PS Sonhat, District Korla (CG).

---- Appellant.

Versus

- State of Chhattisgarh Through -Police Station Sonhat, District Korla (CG).

---- Respondent

For Appellant : Mr. D.N. Prapati, Advocate.

For Respondent/State : Mr. Vinod Tekam, PL.

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 6-3-2010 passed by the Sessions Judge, Korla (Baikunthpur) (CG) in Sessions Trial No. 108 of 2007 wherein the said Court convicted the accused/appellant for commission of offence under Sections 376, 506 (1) and 342 of IPC 1860 and sentenced him to undergo RI for seven years and fine of Rs.500, RI for one year and RI for one year with default stipulations.

2. As per prosecution case, on 21-8-2007 at about 6.15 pm the prosecutrix lodged a report alleging that at about 3.00 pm, she went to the shop of the appellant for purchasing oil, soap, and other things along with one Raj Kumari Pando. It is alleged that the appellant took her forcibly to his house and committed rape on her. The matter was investigated and the appellant was charge-sheeted. After completion of trial, the trial Court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:

i) FIR is lodged for commission of offence under sections 342 and 354 of the IPC which is signed by the prosecutrix in which it is nowhere mentioned that rape has been committed against her.

ii) After consultation, she improved her version after two days in her statement recorded before the Investigating Officer in which she has stated that rape has been committed against her by the appellant.

iii) The trial Court has not considered the evidence of PW/4, Smt. Rajkumari, PW/5, Lagansayi, PW/6 Mahendra Singh, PW/7 Balkaran Rajwade, PW/9 Mangal Sai and PW/11 Jhawar Dhan Kujur who turned hostile and have not supported the prosecution case.

4. On the other hand, learned State counsel supporting the impugned judgment submits that the finding of the trial Court is based on proper marshaling of evidence and the same is not liable to be disturbed.
 5. I have heard learned counsel for the State, perused the judgment impugned and record of the trial court.
 6. To substantiate the charge, prosecution examined as many as 17 witnesses. In the present case, prosecutrix is PW/1 who is aged about 25 years. Though she deposed in examination-in-chief that rape was committed on her, but she admitted in her cross examination (para 3) while reporting the matter to Police Station that she did not narrate the story of rape. From FIR (Ex.P/1), it appears that report was lodged under Sections 342 and 354 of IPC for outraging modesty of the prosecutrix. In this way, she improved her version and narrated different story. Other witnesses namely Manmati (PW/2), Fulmatiya (PW/3 and Balkaran (PW/8) are hearsay witnesses who received information about the incident.
 7. Now the point for consideration of this court is whether hearsay evidence is admissible in evidence and can be acted upon. In
- Kalyan Kumar Gagoi vs. Ashutosh Agnihotri**

reported in (2011) 2 SCC 532, Hon'ble the Supreme

Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible”.

8. The only evidence which is legally admissible evidence is the statement of the prosecutrix, but her statement is not of sterling quality. On the date of reporting of the matter she did not narrate about the commission of rape whereas before the trial Court she narrated different story. When story of rape is not narrated just after the incident, the other story can be accepted only when it is explained that earlier version was stated due to convincing reason, but from her statement it is not clear as to why she did not narrate the story of rape. She plainly says that due to threat of the appellant she did not narrate story of rape. She was fearful

of threat but it is clear that when the fear is removed from her mind, therefore, story of fear cannot be acted upon. The other witnesses are hearsay witnesses. As the hearsay evidence is inadmissible in evidence, it cannot be acted upon. If hearsay evidence is excluded from the entire evidence, there is nothing on record to connect the appellant with the crime in question. Though the medical evidence supported the factum of intercourse with the prosecutrix but the expert opinion is not substantive piece of evidence for answering the crime in question. It can be used in support of substantial evidence but independently it cannot be used to link the appellant for commission of offence. It is settled principle of law that "graver the offence, stricter the proof". It is also settled that there is long mental distance between "may be true and must be true". The prosecution has to establish its case in the category of must be true for criminal liability. The prosecution has not established its case on the touchstone of strict proof. Looking to unstability of the prosecutrix, her version cannot be acted upon, therefore, charges under Sections 376, 506 Part 1 and 342 of IPC are not established. The finding arrived at by the trial Court is not sustainable and the same is liable to be set aside.

9. Accordingly, the appeal is allowed. Conviction and sentence imposed upon the appellant by the trial Court is hereby set aside.

The appellant is acquitted of the charge under Sections 376, 506 Part 1 and 342 of the IPC. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju_