

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 10 of 2011**

Raghuvar Das (wrongly written as Raghubur Das) S/o Ratan Das
 Ram, aged about 22 years, R/o village Amdipara, Police Chauki,
 Bariyo, P.S. Dhaurpur, District Surguja (CG)

---- Appellant

Versus

State of Chhattisgarh, Through: The Police Chauki, Bariyo Police
 Station Dhaurpur, District- Surguja(C.G.)

---- Respondent

 For Appellant : Mr. Shakti Raj Sinha, Advocate.
 For State/respondent : Mr. Lav Sharma, Panel Lawyer.

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD**

03/12/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 7.12.2010, passed by the 3rd Additional Sessions Judge(FTC), Ambikapur, District Surguja (C.G.) in Session Trial No. 434/2009, wherein the said court has convicted the appellant for commission of offence under Sections 376 (1) of IPC and sentenced to undergo R.I. for 7 years and fine of Rs. 1000/- with default stipulation.
2. As per the case of prosecution, prosecutrix is of undeveloped brain and she was all alone on 6.6.2009 at about 11.00 pm in her home situated at village Kakna, Nawapara, at that time the appellant entered and performed sexual intercourse against her will and without her consent. The matter was reported and

investigated and after completion of trial, the trial court convicted and sentenced and appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The prosecutrix has not been produced before the trial Court and in absence of her statement, the theory put forth by the prosecution is doubtful.

(ii) There is delay in lodging the FIR and prosecution has not given any explanation for the said delay, therefore, version of the prosecutrix is under cloud.

(iii) Version of other witnesses are not reliable, therefore, no offence is made out against the appellant.

(iv) It may be a case where prosecutrix was a consenting party and medical report is not supportive of the version of the prosecution, therefore, finding of the trial Court is not liable to be sustained and same deserves to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshalling of evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. I have heard learned counsel for the parties and perused the record of the trial Court.

6. Dr. Sharda Pasari (PW10) examined the prosecutrix on 23.7.2010 at Medical College, Raipur in Clinical Psychology Department and as per version of this witness, the prosecutrix

was not mentally developed, the report is Ex. P13. Version of this witness is unshaken during cross-examination and there is no other psychologist report in the record contrary to the version of this witness, therefore, it is established that the prosecutrix was of undeveloped brain.

7. Sadhin Das (PW1) is an eye-witness to the incident. As per version of this witness, when he entered in the house of the prosecutrix at about 10.30 pm, he saw that the appellant was committing sexual intercourse with the prosecutrix. He further clarified that the appellant committed rape on the prosecutrix. He further deposed that when he objected to the act of the appellant, he fled away from the spot. On his cries, his father, sister and brother-in-law reached there and neighbours also gathered there. Thereafter, a meeting was convened in the village where the appellant was called. Version of this witness is supported by the version of Sonwa Das (PW2), Krishna Bai (PW3) and Subhag Das(PW4). All the witnesses have deposed in one voice that Sadhin Das (PW1) has seen the incident and when he objected the act of the appellant, he fled away from the spot. From the evidence of Subhag Das (PW4) (para 3) it is clear that the appellant made extra judicial confession for committing the wrong. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

8. True it is that the incident is of 6.6.2009 and report was lodged at Police Station Dhaupur on 8.6.2009 and there is delay of 2 days in lodging the report, but the fact remains that 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 little delay of 2 days in lodging the FIR. The delay in a case of sexual assault cannot be equated with the case involving other offences. There are several factors in the mind of the prosecutrix 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 delay in lodging FIR. 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. True it is that the prosecutrix has not been examined in the present case, but the fact remains that the case of the prosecution is based on the evidence of Sadhin Das (PW1), who informed the incident to his near relatives and people of the locality which shows genuineness of the incident. Again, the appellant has admitted his guilt before the gathering people,

therefore, his extra judicial confession is also supportive piece of evidence to the statement of Sadhin Das (PW1), therefore, non-examination of the prosecutrix who was of undeveloped brain has no adverse effect in the facts and circumstances of the case.

10. The trial Court has evaluated the evidence elaborately and this Court has no reason to substitute a contrary finding. Offence of rape is punishable under Section 376 (1) IPC, for which, the trial Court has convicted and sentenced the appellant and same is hereby affirmed.

11. Heard on the point of sentence:

The trial court has awarded jail sentence of 7 years and fine of Rs.1000/- for commission of offence under Section 376 (1) of IPC and less than minimum cannot be awarded. Looking to the gravity of the offence, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. It is reported that the appellant has suffered full term of his jail sentence and has been released, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
Judge