

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 11 of 2009

Judgment Reserved on 08-10-2018

Judgment delivered on 29-10-2018

- Chhabilo, s/o. Jaidev Mochi, aged about 25 years, r/o. Village Shakarpur Tukda, Police Station Sankara, District Mahasamund (CG).

---- Appellant

Versus

- The State of Chhattisgarh through Police Station Sankara District Mahasamund (CG).

– Respondent

For Appellant : Mr. Mandavi Bharadwaj, Advocate.
For Respondent/State : Mr. Vinod Tekam, 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 7-11-2008 passed by the Sessions Judge, Mahasamund, Session Division Mahasamund (CG) in Sessions Trial No. 44 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.2000/- with default stipulations.

2. In the present case, prosecutrix is PW/1. It is alleged by the prosecution that on 4-6-2008 at about 8.15 pm prosecutrix was all alone in the house situated at village Sankarpur and the same time

appellant entered into her house and enquired about other family members and thereafter he dragged the prosecutrix and committed rape on her. Prosecutrix informed the incident to her brother, father and other people of the locality. 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) Prosecution story appears to be fabricated, particularly when the incident had said to be taken place at 8.15 p.m, and first information report was lodged on the next day at about 11.00 a.m.
- ii) Prosecution has failed to produce any document relating to the age of the prosecutrix and there is no document to show the fact that prosecutrix was below 16 years of age at the time of incident.
- iii) The trial Court has overlooked the material contradiction between statement before the court and the statement recorded during investigation under Section 161 of Code of Criminal Procedure, therefore, finding arrived at by the trial Court is not sustainable.

- iv) The trial Court has ignored the material aspect of the matter and sentence awarded by the trial court is excessive, therefore, the same is liable to be reversed.

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. To substantiate the charge, prosecution examined as many as ten witnesses. In the present case, date of incident is 1-6-2008 at about 8.15 pm and report was lodged at Police Station Sankara on the next day of the incident i.e., 2-6-2008 at about 11.00 a.m. The place of incident is village Sankarpur which is situated at a distance of 22 kms from Police Station Sankara. It is mentioned in the FIR that due to incident happened at night the matter was reported on the next day morning in which name of the appellant is mentioned as culprit and his act is also mentioned. PW/1 prosecutrix deposed before the trial Court that

at the time of incident, she was all alone in her house when the appellant reached there and enquired about her parents. When she replied that they were not within the four corners of the house, the appellant caught her, dragged her and thereafter committed rape on her. Version of this witness is supported by version of Labhoram (PW/2) who is father of the prosecutrix, PW3 Vishram and PW/4 Sadhram. All the witnesses have been subjected to searching cross examination but they are unshaken and nothing could be elicited in favour of defence. Version of these witnesses is supported by version of Dr. Smt. Tara Agrawal (PW/6) who examined the prosecutrix on 2-6-2008 at Community Health Centre, Pithora, District Mahasamund and noticed the following injuries on her body as per Ex.P/7.

I/M 2 Black moles at the neck.

O/E **External Examination:**

Physically and mentally sound, sex duration not fully developed, multiple stretch mark present on both arm back, legs, anteriorly and posteriorly looked reddish black colour – c/o. Pain all over body specially on back – long – 8 days back.

Internal Examination:

Hymen intact but swollen tender and dilated admits index finger easily around the hymen

therein laterally, tenderness present underneath the formidable looked swollen tender, PV cut small in the A/V. Two vaginal slides made, packed, sealed and handed over to the constable to be sent for chemical analysis.

Doctor opined that there are signs of recent sexual intercourse. Accused could not penetrate the hymen fully. Duration of injury within 24 – 48 hours.

7. From the evidence of this witness, she found character of instant intercourse of prosecutrix. This witness is also subjected to cross-examination but her opinion is not rebutted and there is no other expert opinion contrary to the opinion of this witness. Therefore, it is proved that the injuries were found on the body of the prosecutrix. Version of this witness is supported by version of Dr. Laxmi Shankar Prasad (PW/7) who examined the appellant and found him to be capable of intercourse. While lodging the report at Police Station on the next day of the incident, it is properly explained that due to incident happened at night, the report could not be lodged on the same day and it is lodged only on the next day morning. Looking to the facts of the case, it cannot be said that report is delayed and explanation on this count is just and proper. Again, there is no material contradiction

regarding commission of rape in the statement of any of the witnesses. The statement of the prosecutrix is of sterling quality and this Court has no reason to discard the same. Therefore, argument advanced on behalf of the appellant is not sustainable.

8. Commission of rape by the appellant is clearly established from the evidence adduced by the prosecution which is an offence punishable under Section 376 of the IPC for which the trial Court has convicted the appellant and the same is hereby affirmed. Offence under Section 376 of IPC is punishable with imprisonment for life and minimum punishment that can be awarded is seven years. The trial Court has awarded sentence of seven years which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered with by this Court.

9. Accordingly, the appeal is liable to be and is hereby dismissed. As the appellant is reported to be in jail, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)
JUDGE