

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 83 of 2010**

Nawasai Kanwar s/o Golan Sai Kanwar, aged about 35 years,
R/o village Behari Kona Manoharpur, P.S. Shankargarh
District Surguja (CG)

---- Appellant**Versus**

State of Chhattisgarh Through D.M. Surguja (CG)

---- Respondent

For Appellant : Ms. K. Tripti Rao, Advocate

For the respondent/State: Shri S.K.Mishra, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****24/8/2018**

1. Shri Agurag Shrivastava, Shri S.D. Singh, Shri Vineet Kumar Pandey and Shri Anand Kesharwani, Advocates have been engaged by the appellant, but despite repeated calls, none appeared on all dates of the week, therefore, Ms. K. Tripti Rao, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 1.12.2009, passed in S.T.No.375/2008 by the Additional Sessions Judge (FTC), Surguja (Ambikapur) (CG) for commission of the offence under Section 376(1) of the I.P.C. and sentenced to undergo R.I. for 10 years and fine of Rs.1000/- with default stipulation.

3. In the present case prosecutrix is PW5. As per case of the prosecution, on 12.7.2008, at about 11.00 am at village, Manoharpur, Behari Kona Tola, husband of the prosecutrix had gone to the fields for cultivation and prosecutrix was taking meals for him. When she reached near Kandanapath forest, the appellant called her from backside and thereafter, caught hold of her and thrown her on the ground and removing her wearing apparels committed rape on her. The prosecutrix narrated the story to her husband immediately and report was lodged. The matter was investigated and after completion of trial, the appellant was charge sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellant as aforementioned.

4. I have heard learned counsel for the parties and perused the record.

5. Learned amicus curiae appearing on behalf of the appellant submits as under :

(i) The complete case of the prosecution rests on the evidence of the prosecutrix but, her version is doubtful and she is completely consenting party as per scene of occurrence.

(ii) No injury was received by the prosecutrix even when she was thrown on the ground, therefore, the theory putforth by the prosecution is not reliable.

(iii) The version of the prosecutrix is not supported by chemical examination, therefore, benefit of doubt should be extended to the appellant.

(iv) The trial Court has overlooked the contradictions in the statement of the prosecutrix and finding arrived at by the trial Court is not as per factual matrix and legal aspect of the matter.

6. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on proper marshalling of oral and documentary evidence on record which is just and proper.

7. To substantiate the charge prosecution has examined as many as 8 witnesses.

8. In the present case, date of incident is 12.7.2008 and report was lodged in Shankargarh Police Station next date i.e. on 13.7.2008. The distance between the place of incident and Police Station is about 18 km and F.I.R. is lodged showing name of the appellant as culprit. The prosecutrix has clearly deposed that the appellant caught hold her forcefully and thereafter committed rape on her. Her version is clear regarding commission of offence. She has categorically stated that the appellant inserted his penis into her vagina and thereafter committed rape on her. The prosecutrix is subjected to cross-examination but nothing could be elicited in her statement. Version of the prosecutrix is supported by the version of Ramu (PW6), who is husband of the prosecutrix to whom she has

narrated the story just after the incident. Again, it is supported by the version of Suresh Kumar (PW1) to whom the prosecutrix and her husband have informed about the incident. Version of this witness is supported by the version of medical evidence of Dr. Joseph Lakda (PW7) who examined the appellant and found him capable of committing intercourse.

9. There may be some variation in the statements of witnesses which is deposed before the Court long after their examination before the investigating officer, but the same is insignificant because there is no material contradictions or omissions on the part of any of the witnesses. The prosecutrix has remained firm to her version from the day of investigation till her deposition before the Court. It is a settled law that quality of the witness has to be weighed. In the present case, all the witnesses have deposed in one line against the appellant and there is nothing on record to discard their evidence. Theory of doubt in the statement of any witness is not substantiated by cross-examination of the witnesses. If prosecutrix would have a consenting party she would not have complained to others and would not have reported the matter to the police. Therefore, it is not a case of consenting and the arguments advanced on behalf of the appellant is not sustainable.

10. True it is that no injury was found on the body of the prosecutrix but the same is not sufficient to reject her version in its entirety.

11. On overall assessment of the evidence, the ground raised on behalf of the appellant is not sustainable. The finding of the trial Court is based on oral and documentary evidence adduced by the prosecution side and same is hereby affirmed. The trial Court has awarded sentence R.I. for 10 years. Offence under Section 376 (1) I.P.C. is punishable with imprisonment for life, therefore, the sentence awarded is not disproportionate, unreasonable or harsh. The appeal is liable to be and is hereby dismissed.

12. Accordingly, the appeal is liable to be and is hereby dismissed. As per report, the appellant has already suffered the full jail term, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
JUDGE