

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 597 of 2010

(Arising out of judgment/order dated 10/02/2010 in S.T. No. 50/2009 of the learned 14th Additional Session Judge (F.T.C.), Raipur)

- Gopy Gadariya, S/o Ramnath Ram Gadariya, aged about 28 years, R/o Sheetalapara, Raipur, Distt. Raipur (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh, Through – Police Station, Arang, District Raipur (C.G.)

---- Respondent

For Appellant	:	None for the appellant
For State	:	Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

JUDGMENT ON BOARD

20.01.2018

1. In this Criminal Appeal the challenge is levied to the judgment of conviction and order of sentence dated 10/02/2010 pronounced by 14th Additional Sessions Judge (F.T.C.), Raipur in S.T. No. 50/2009, whereby and whereunder the appellant was convicted for the offence under Section 376 of Indian Penal Code (for short, 'IPC') and sentenced to undergo rigorous imprisonment of 7 years and fine of Rs.500/-, in default of payment of fine, additional R.I. for 3 months, convicted for offence under Section 506(B) of IPC and sentenced to undergo rigorous imprisonment of 1 year and fine of Rs.500/-, in default of payment of fine, additional R.I. for 3 months. It is further directed that both the imprisonment to run concurrently.

2. This is admitted by appellant that PW-9 Anita Bai Lodhi, PW-2 Angad Lodhi, PW-3 Ku. Vimla, PW-7 Ramkumar know him, the agriculture field of PW-9 Anita Bai is in Hathmar, PW-3 Ku. Vimla, PW-7 Ramkumar know the prosecutrix.

3. In brief, the prosecution story is that at the time of alleged incident prosecutrix was near about 40 years old. She is the resident of village Arang. On 15/12/2008 near about 12 p.m. prosecutrix was picking paddy seeds in her own field. The appellant reached there and caught her hold, gagged her mouth by his hand, thereafter he committed forcible sexual intercourse with her and given threatening to kill to her entire family. On 26/12/2008 prosecutrix lodged the report in Police Station, Arang. After completion of the investigation, a charge-sheet was filed against the appellant. After completion of trial, trial Court convicted the appellant as aforesaid.

4. As per the letter/report of Central Jail, Raipur dated 09/11/2017 appellant has been released on 25/07/2014 after getting the benefit of remission.

5. As per the alleged M.L.C. Report Ex.P/1 appellant was examined by PW-1 Dr. K.S. Rai, he opined that it could not be said that the appellant was not capable to perform the sexual intercourse.

6. There is no such evidence on record on strength of which it could be said that Ex.P/1 is not believable. Thus, this Court believes on Ex.P/1.

7. PW-9 prosecutrix says in para 1 of her statement given on oath that she had gone her field to pick the paddy seeds. The appellant came there

gagged her mouth by his hand and committed forcible sexual intercourse with her. He had also given the threatening to kill her entire family.

8. PW-2 Angad, who is husband of the prosecutrix says in paragraph 1 of his statement given on oath that his wife was become motionless. When he asked to her, then she told him that she had gone to pick up the paddy seeds in her field then appellant reached there and committed sexual intercourse forcibly and given the threatening to kill.

9. PW-3 Ku. Vimla says in para 1 on her statement given on oath that she had seen that appellant entering in the field of the prosecutrix.

10. DW-1 Ramesh Lodhi says in para 1 of his statement given on oath that he had heard that appellant had committed rape with prosecutrix.

11. In alleged FIR Ex.P/7 the alleged incident has been described with the specific role of the appellant.

12. PW-9 prosecutrix says in para 9 that due to fear she had not narrated the incident to anyone earlier. In Ex.P/1 the reason for delay has been mentioned to save honour of the family and threatening. These reasons are just and sufficient.

13. There is no such evidence on record on the strength of which it could be said that Ex.P/7 is not natural.

14. There is no such evidence on record on the strength of which it could be said that said statement of PW-9 Anita Bai, PW-2 Angad Lodhi, PW-3 Ku. Vimla are not normal, not natural and not simple.

15. Looking to the above mentioned facts and circumstances of the case, this Court believes on the said statement of PW-9 Anita Bai Lodhi, PW-2 Angad Lodhi, PW-3 Ku. Vimla and disbelieves the statement of DW-2 Radheshyam in this reference that allegedly prosecutrix was picking the paddy seeds from the field of appellant and quarrel was happened, allegedly there was dispute between the husband of the prosecutrix and appellant due to canal water, thus appellant has falsely implicated.

16. Looking to the above mentioned facts and circumstance, this Court finds that the prosecution has succeeded to prove the charges under Sections 307 and 506(B) of IPC.

17. After appreciation of evidence, this Court finds that there is no illegality committed by the trial Court in convicting and sentencing the appellant as mentioned above.

18. Hence, the appeal deserves to be and is hereby dismissed.

19. As the appellant has already been set at liberty after completion of sentence, no further order is required.

Sd/-
(Sharad Kumar Gupta)
JUDGE