

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.235 of 2011**

Toran Chouhan, S/o. Sevaram Chouhan, aged about 23 years, Occupation Agriculturist, R/o. Village Bharda (Marda), Police Station Berla, District Durg (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through the Police Station Berla, Distt. Durg (CG)

---- Respondent

For the appellant : Shri Amit Kumar Sahu, Advocate

For the respondent/State: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****06.12.2018.**

1. This appeal is directed against the judgment dated 28.02.2011 passed by Additional Sessions Judge (FTC), Bemtara, Distt. Durg (CG) in Session Trial No.29/2010 wherein the said Court convicted the appellant for commission of offence under Sections 450 & 376(1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for five years and to pay fine of 2000/-; RI for eight years and to pay fine of R.4000/- with default stipulations with a direction to run the sentences concurrently.

2. In the present case, prosecutrix is PW-1. As per the prosecution case, on 11.4.2010 at about 11.00 am, the appellant entered into the house of the prosecutrix and committed sexual intercourse with her without her consent and against her will. Brother of the prosecutrix reached to the spot where the appellant

was present. Thereafter the matter was reported, after completion of investigation, the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) As per the version of Sundari Bai (PW-11), mother of the prosecutrix, the prosecutrix did not complaint about the sexual assault, therefore charge levelled against the appellant is not established.

(ii) As there is no injury found on the body of the prosecutrix, version of the prosecutrix become doubtful.

(iii) From the evidence in its entity, it appears that it may be a case of consent, therefore, finding arrived at by the trial Court is not sustainable.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. Prosecutrix (PW-4) deposed before the trial Court that the appellant entered into her house and dragged her to a room thereafter committed sexual intercourse with her. She explained the act of the appellant that after removing her undergarment, he inserted his penis into her vagina. This witness has been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

6. Version of the prosecutrix is supported by the version of Gopirai Chouhan (PW-2) to whom his son Deepak informed about

the incident. This witness was also subjected to cross-examination but remained unshaken. Version of both these witnesses is supported by the version of Dr.Jitendra Kumar Kunjam (PW-9) who examined the appellant and found him capable to commit sexual intercourse. Again it is supported by the version of Dr. (Smt.) Vrinda Mandge (PW-19) who examined the prosecutrix and prepared slide from her vaginal swab. Underwear of the prosecutrix was seized in the present case and said underwear and slide were sent to Forensic Science Laboratory for examination and the report received from the laboratory confirms presence of spermatozoa which corroborate the factum of intercourse. Version of direct evidence and medical evidence are also supported by the FIR (Ex-P/1) which was lodged on the date of incident itself i.e. 11.4.2010 in which the appellant has been named as culprit and it is mentioned in the FIR that he committed rape with the prosecutrix.

7. The statement of the prosecutrix is quite natural, inspire confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary, but in the present case, there is ample corroborative piece of evidence. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge the

complaint and when the version of the prosecutrix is inspiring confidence, there is nothing to disbelieve the prosecution case.

8. After reassessing the evidence, this Court has no reason to hold that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of the prosecution.

9. Considering the facts and circumstances of the case, the Court is of the view that the finding arrived at by the trial Court is based on proper marshaling of the evidence and this Court has no reason to record a contrary finding.

10. House trespass in order to commit offence punishable with imprisonment for life is an offence under Section 450 of IPC and rape is punishable under Section 376(1) of IPC for which the trial Court has convicted and the sentenced the appellant and same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded RI for eight years for the offence under Section 376(1) of the IPC which cannot be termed as harsh or unreasonable or disproportionate. Therefore, sentence part is not liable to be interfered with. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

12. Accordingly, the appeal is dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**