

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1214 of 2000

Judgment Reserved on 10-9-2018

Judgment delivered on 12-10-2018

- Neelchandra Satnami Nirali s/o. Shri Mahesh Satnami, aged 30years, r/o. Village Banskaatha, Tahsil Masamund, District Mahasamund, MP (Now CG).

---- Appellant

Versus

- State of Madhya Pradesh (Now State of CG).

– Respondent

For Appellant	:	Mr. J.A. Lohani, Advocate.
For Respondent/State	:	Ms. K. Tripti Rao, 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 1-5-2000 passed by 1st Additional Sessions Judge, Mahasamund, Session Division Mahasamund (CG) in Sessions Trial No. 285 of 1997 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 eight years and to pay fine of Rs.3000/- with default stipulations.

2. In the present case, prosecutrix is PW/2. It is alleged that on 3-5-1997 at about 9.00 am she went to her barn for making cow-dung cake and at the same time appellant reached there and

caught hold her. When she tried to make hue and cry, he shut her mouth and thereafter he threw her on a bunch of straw and committed rape on her and thereafter fled away by crossing the wall of the barn. On cries of prosecutrix people of locality reached there and thereafter the matter was reported at Police Station Baghbahara. The matter was 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) It is not mentioned in earlier statement of the prosecutrix (Ex.D/1) that appellant removed his clothes and shut her mouth. Therefore, shutting of mouth of the prosecutrix and removing clothes by the appellants is false story and as prosecutrix was free to move, version of the prosecutrix is not reliable.
- ii) Though prosecutrix deposed before the trial Court that during incident she caused injury to the appellant, but no injury was found on the body of the appellant, therefore, statement of the prosecutrix is not reliable.

- iii) Prosecutrix deposed that her bangles were not broken and she did not hold clothe of the appellant while he was fleeing, therefore, version of the prosecutrix is not reliable. As per version of prosecutrix, there were thorns in the field. If there were thorns in the field, the appellant would have suffered injury on his leg while crossing the wall but no injury was found on the leg of the appellant which shows that story is concocted.
- iv) The person in whose house the appellant entered after fleeing, has not been examined, therefore, version of the prosecution is not reliable. The trial Court has not evaluated the evidence of defence which shows the grudge between the parties, therefore, the finding of the trial Court 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. In the present case, date of incident is 3-5-1997 and report was lodged on the same day at Police Station Baghbahara. The place of incident is village Banskaatha which is situated at a distance of 25 kms from Police Station Baghbahara where the report is lodged by the prosecutrix in which name of the appellant is mentioned as culprit and his act is also mentioned in the FIR and she was examined by the prosecution before the trial Court as PW/2. As per version of this witness, she had gone to her barn for making cow-dung cake and at the same time appellant reached there, caught hold her, removed his dress and thereafter inserted penis into her vagina. She further deposed that when she cried for help the appellant shut her mouth. As per version of this witness after committing rape appellant fled away from the spot. She further deposed that just after the incident her husband reached to the spot and the persons namely Sriram, Bisahu, Tetaku and Derha were working in their barn. Version of this witness is subjected to searching cross examination, but nothing could be elicited in favour of the defence on material point. Version of this witness is supported by the version of PW/3 Lularam. As per version of this witness prosecutrix was crying for

help and when he rushed to barn of the prosecutrix, he saw the appellant fleeing towards barn of one Banshi. As per version of this witness, prosecutrix informed him that the appellant committed rape on her. Version of this witness is unshaken during cross examination. PW/4 Derha has also supported the version of prosecution who has seen the appellant moving from the spot. Punitram (PW/5) has also supported the version of the prosecutrix who has seen the appellant coming out from the barn of the prosecutrix. Direct evidence of the witnesses mentioned above find support by the evidence of Dr. B.P. Malani (PW/8). As per version of this witness, he examined the appellant and found that the appellant was capable to perform sexual intercourse.

7. Learned counsel for the appellant would submit that as per version of Dr. B.P. Malani (PW/8) he did not find any injury on the face of the appellant, therefore, it is a case of consent. In view of this court, argument of the appellant is without substance. The prosecutrix has informed the incident to the people of the locality just after the incident and she cried during the incident. If she is a consenting party, she would not have cried for help of the people and did not have narrated the story to the people at large. Her conduct shows that she is not a consenting party that is why she cried for help during the incident and narrated the incident to the people of the village just after the

incident and reported the matter at Police Station, therefore, it is not a case of consent.

8. Learned counsel for the appellant would further submit that there is discrepancy in the statement of the prosecutrix, therefore, her version is not reliable. As per the argument of appellant, when appellant undressed himself, there was occasion for the prosecutrix to flee away but that is not done. Again, bangles of the prosecutrix were not broken and no injury was found on the leg of the appellant when thorns were there in the field where the incident took place. In view of this court, all these facts are not material discrepancies in the statement of the prosecutrix. As per statement of the prosecutrix, it is clear that she has been thrown in the bunch of straw kept in the barn and therefore, she was unable to flee away. Again, bangles are broken when force is used on bangles. If bangles are not broken, it means no force is used on bangles. It is also not clear in which part of land thorns were there. If the appellant moved apart from that place, then there is no occasion to sustain injury by thorn.

9. It is settled law that minor discrepancies which do not go to the root of the case are insignificant and will not effect the fate of the prosecution. Discrepancy shown by the defence side is not material discrepancy. In case of rape, statement of the

prosecutrix is sufficient to bring home the guilt because normally woman is reluctant to expose anything against her chastity. In the present case, prosecutrix is firm right from day of the incident in lodging the report and she is stable to her version before the court, her statement is of sterling quality which cannot be thrown over board on insignificant omissions and contradictions.

10. One Bheerdas (DW/1) has been examined by defence side who deposed that there is no talking terms between the appellant and Tularam, but from his statement there is no scope to infer that appellant was implicated on account of any grudge between appellant and Tularam. Therefore, version of defence witness is also not affecting the prosecution case. The trial Court has elaborately discussed the entire evidence and this court has no reason to substitute contrary finding.

11. The act of the appellant is intentional and forceful. From the evidence of the prosecutrix, it is clearly established that the appellant committed sexual intercourse with her without her consent and against her will. It is not the case where the prosecutrix has moved any where of her own will with the appellant, therefore, the act of the appellant is not an act of consent and his act is rape as defined in Section 375 of the IPC. Commission of rape by the appellant is clearly established from

the evidence adduced by the prosecution which is an offence punishable under Section 376 (1) of the IPC for which the trial Court has convicted the appellant and the same is hereby affirmed. Offence under Section 376(1) 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 eight years which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered with.

12. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand cancelled. The trial Court will prepare super session warrant and issue warrant of arrest against him. After his arrest he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial Court to submit compliance report on or before 11th January, 2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju