

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 14-11-2018

Judgment delivered on 28-11-2018

CRA No. 550 of 2009

- Rakesh Kumar Yadav s/o. Hariram, aged about 30 years, occupation Labour r/o. Village Gattasilli, P.S. Nagari, District Dhamtari (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Nagari, District Dhamtari (CG).

---- Respondent

 For Appellant : Mr. D.N. Prajapati, Advocate

For respondent/State : Mr. Vivek Sharma, Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 28-7-2009 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989") Dhamtari, District Dhamtari in Special Sessions Trial No. 17 of 2008 wherein the said Court has convicted the appellant for commission of offence under Sections 450 & 376 (1) of the IPC and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.5,000/- and RI for five years and fine of Rs.5,000/- with default stipulations.

2. As per prosecution case, on 22-3-2008 at about 8.00 pm at village Gattasilli, prosecutrix (PW/3) was sitting along with her husband namely Amritlal, Diwakar and appellant Rakesh Kumar Yadav in front of her house. After sitting for sometime her husband and his friend Diwakar had gone towards town. When she entered into her house, the appellant forcibly entered into her house and committed sexual intercourse with her without her consent and against her will. When she shouted her daughter Mamta came to her room and the appellant threatened her of life. Later on her husband Amritlal and Diwakar both entered into the room and saw the incident. Thereafter the appellant fled away from the spot.

3. Prosecutrix went to the house of Neera Bai (DW/2) due to fear that her husband may assault her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

4. Learned counsel for the appellant would submit as under:

- i) Conduct of the prosecutrix after incident would show that she was a consenting party and was having relation with the appellant, therefore, no offence is made out. The trial Court committed an error by disbelieving the statement of defence witness, particularly the statement of Neera Bai (DW/2) in which she specifically stated the fact that prosecutrix has not narrated

the incident to her. The trial Court committed an error by relying on the statement of Mamta (PW/2) who is daughter of the prosecutrix whose version does not support sexual intercourse by the appellant.

- ii The trial Court should have seen that important witness namely Diwakar (PW/8) has turned hostile and not supported the version of prosecution.
- lii) There are major contradictions and omissions in the statement of Amritlal (PW/3), prosecutrix (PW/1) and Mamta (PW/2) which have been overlooked by the trial Court.
- iv) It is established that the appellant and the husband of prosecutrix were having previous enmity and the appellant succeeded in Panchayat election and there is delay in lodging the FIR, therefore, finding of the trial Court is not liable to be sustained.
- v) In support of his arguments, he placed reliance on the decision of this court in the matter of **Bhuneshwar Sahu vs. State of MP (Now CG) 2012 (4) CGLJ 416.**

5. 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 marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. In the present case, prosecutrix is PW/3. As per version of this witness, she was sitting in a platform made near her house along with her husband namely Amritlal, Diwakar and appellant. After 15- 20 minute, her husband and Diwakar left the place. Her husband also asked the appellant to accompany them, but he remained there. Thereafter, she returned to her home where the appellant followed her and entered into her house, caught hold her hand, dragged her inside the room, thrashed her on cot, removed her clothes and thereafter he inserted his penis into her vagina and committed rape on her. When she cried, her daughter namely Mamta (PW/2) reached there to whom the appellant threatened to kill. Thereafter Mamta came out of the house and shouted thereafter her husband Amritlal and Diwakar reached there and pushed the appellant out of the room. As per version of this witness, she narrated the story to her husband. From the evidence of this witness, it appears that she was fearful to her husband that he may assault her that is why she left the house and went to Gundrapara (para 18) and after two days report of the incident was lodged at Police Station Nagari. Version of

this witness is supported by version of PW/2 Mamta who is her daughter who saw the appellant lying over the prosecutrix and he threatened her to kill. She further deposed that she came out of the house and cried and thereafter her father Amritlal and Diwakar reached there. Version of Mamta (PW/2) and prosecutrix (PW/3) is supported by the version of Amritlal (PW/1) who is husband of the prosecutrix.

8. Presence of the appellant in the house of the prosecutrix is established by the statement of Diwakar (PW/8). Dr. D.R. Thakur (PW/7) who examined the appellant found him capable of intercourse. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence side. Looking to the conduct of the appellant, it appears that he knew about non-presence of husband of the prosecutrix in the house, because husband of the prosecutrix left the platform near the house with Diwakar (PW/8) and prosecutrix entered into her house alone. Following the prosecutrix even after knowing that her husband is not in the house shows fraudulent intention of the appellant. Prosecutrix cried when she was dragged by the appellant and her daughter reached to the spot who saw the appellant lying over the prosecutrix. If prosecutrix would have been a consenting party, she would not have cried for help and conduct of the

prosecutrix during the course of offence shows that act was committed against her will and without her consent. Argument advanced on behalf of the appellant regarding consent of the prosecutrix, is not acceptable.

9. From the statement of Mamta (PW/2), Amritlal (PW/1) and Diwakar (PW/8), presence of the appellant with prosecutrix is established. The other witnesses are not the real witnesses of the incident and therefore, version of other witnesses is not categorical and real witnesses and no finding can be arrived at on the statement of other witnesses. There is no material contradiction in the statement of prosecutrix, her daughter and her husband and all have deposed in one voice and therefore, it is not the case where material contradiction is established. Minor contradictions which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the prosecution.

10. The statement of the prosecutrix is quite natural, inspires 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 that daughter of the prosecutrix reached to the spot while process was going on and again husband of the prosecutrix also reached to the spot and found the appellant in the company of the prosecutrix.

11. It is true that there is delay of two days in lodging the report at Police Station. Prosecutrix is a married woman, she was fearful after the incident to her husband that is why she left the place for one day and thereafter prosecutrix and her husband lodged the report after two days of the incident. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound

society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

12. After assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix, her daughter and her husband. Delay has the effect of putting the Court on guard to search if any explanation has been offered for the delay. In the present case, prosecutrix was fearful after the incident to her husband that is why there is delay of two days in lodging the report and same is properly explained. Therefore, delay has no adverse affect in the facts and circumstances of the case.

13. Consideration all the facts and circumstances of the case, this court is of the view that the case law cited by learned counsel for the appellant is clearly distinguishable from the facts of the present case.

14. The trial Court has evaluated the evidence elaborately and this court has no reason to substitute the contrary finding. House trespass for an offence which is 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 the appellant and same is hereby affirmed.

15. Heard on the point of sentence.

The trial Court awarded RI for five years for offence of rape under Section 376 (1) of IPC and RI for three years for offence of house-trespass under Section 450 of IPC which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

16. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 5-2-2019.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju

