

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 119 of 2010****Reserved on : 12.11.2018****Delivered on : 28.11.2018**

Chainu Ram Sahu, S/o Munj Ram Sahu, aged about 37 years,
resident of Dabo O.P. Setganga Fasterpur, P.S. Mungeli, District-
Bilaspur (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through P.S. Mungeli, District- Bilaspur (C.G.)

---- Respondent

 For Appellant : Mr. Ravinder Singh Chhabra & Mr.
 Ashutosh Trivedi, Advocates.
 For State/respondent : Mr. Vinod Kumar Tekam, PL.

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

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 30.01.2010 passed by Second Additional Session Judge (FTC), Mungeli, District- Bilaspur (C.G.) in Session Trial No. 24/2009, wherein the said court convicted the appellant for commission of offence under Sections 376 (1) & 506 (Part-II) of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 1000/- and R.I. for 6 months and fine of Rs. 500/- respectively with further default stipulations.
2. In the present case, the prosecutrix is PW-7. According to the prosecution, on the night of 17.03.2009, the prosecutrix along with her mother-in-law had approached the appellant for her treatment to cure problem persist in her stomach. It is alleged

that the appellant taken the prosecutrix nearby field and had started practicing exorcism, thereafter, the appellant told the mother-in-law to go away hence, she went to some other place and thereafter, the appellant committed rape on prosecutrix. The prosecutrix disclosed the incident on next morning i.e. on 18.03.2009 and thereafter, matter was reported on next day i.e. on 19.03.2009. Matter was reported and investigated and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

- (i) There is delay of 2 days in lodging report and the same has not explained, therefore, case of the prosecution is fabricated.
- (ii) The prosecutrix had not informed the incident to her mother-in-law while returning from the place of incident. The whole night she slept at home with her family but she did not disclose anything to her family members. Her silence till next morning creates doubt over the prosecution case.
- (iii) After rape, she once again had gone to the appellant house where he had given some more treatment to her. This conduct of the prosecutrix is highly unnatural against the human probabilities.
- (iv) The trial court has ignored material omission and contradiction which is vital in nature.

(v) The medical examination of the prosecutrix does not corroborate her testimony and medical examination has lost its value because the prosecutrix is a married lady and she spent two nights with her husband after the incident.

(vi) The trial court has erroneously drawn conclusion regarding the counter report lodged by the appellant. Finding arrived at by the trial court is liable to be reversed.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. The prosecutrix (PW-7) deposed that she went to the appellant for her treatment and during treatment in field, he asked mother-in-law of the prosecutrix to leave the place and thereafter, by upturning her sari, has inserted his penis into her vagina. She further deposed that she objected to the act of the appellant, but he threatened her to kill. Version of the prosecutrix (PW-7) is supported by version of mother-in-law Dropadi Bai (PW-8) who accompanied the prosecutrix for treatment from the appellant. Again, version of the prosecutrix is supported by version of husband namely Radheshyam Sahu (PW-9). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Version of the prosecutrix is supported by version of medical expert- Dr. Sudesh Ratre (PW-5) who

examined the appellant and found him capable to perform intercourse.

6. True it is that delay of two days in lodging the report against the appellant but the point is whether the delay is fatal to the prosecution case. In the peculiar facts and circumstances of the case, it is not an ordinary rape, it is exceptional one. It is a case of betrayal by the appellant to whom the prosecutrix trusted for treatment, has committed rape on her.
7. When FIR by a woman is to be lodged with regard to commission of offence like rape, many questions obviously grow up for consideration before finally deciding to lodge FIR. In the facts and circumstances of the case, it is difficult to participate in plight of victim who has been criminally assaulted on such a manner. Obviously, the prosecutrix must have also gone through turmoil. The delay in case of sexual assault cannot be equated with case involved other offences. There are several factors in the mind of the prosecutrix before coming to the police station.
8. In a tradition bound non-permissive society more particularly in the rural areas, it would be quite unsafe to throwout the prosecution case merely on the ground that there is delay in lodging FIR. Delay in lodging FIR cannot rest on ritualistic formulae. In the facts and circumstances of this case and in the considered view of this Court, delay in the present case is not fatal to the prosecution.

9. Arguments advanced on behalf of the appellant that case of the prosecution is fabricated is not sustainable. A woman in a tradition bound non-permissive society would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity, had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing anyone about the incident in the circumstances cannot be detract from her reliability. In normal course of human conduct, a woman would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident.
10. Evidence of the victim of sexual assault if inspired confidence, the conviction can be founded on her testimony alone. It is not a case where there is any infirmity in the statement of the prosecutrix who come forward and shown courage. She has made a humiliating statement against her honour, any suspicion will aid to her injury, therefore, argument advanced on behalf of the appellant is not sustainable.
11. It is a case of betrayal by the appellant to whom the prosecutrix trusted in treatment, therefore, version of the prosecutrix cannot be seen under cloud. There is no material contradiction in the statement of the prosecutrix which go to the route of the case. Any minor contradiction which do not go to the route of the case is insignificant and on the basis of any minor contradiction, case of the prosecutrix cannot be

doubted with, therefore, argument advanced on behalf of the appellant is not acceptable.

12. The trial court has rightly evaluated the entire evidence and this Court has no reason to record contrary finding. Commission of rape by the appellant is offence punishable under Section 376 (1) of IPC and threat to kill is offence punishable under Section 506 (Part-II) of IPC for which the trial court convicted the appellant and the same is not liable to be interfered with and conviction of the appellant is hereby affirmed.

Heard on the point of sentence

13. The trial court awarded jail sentence of 7 years and fine of Rs. 1000/- for commission of offence under Section 376 (1) of IPC. Looking to the gravity of the offence, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
14. The appellant is reported to be on jail, therefore, no order for his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge