

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 620 of 2010****Reserved on : 19.10.2018****Delivered on : 28.11.2018**

Hariram, S/o Kushal, aged about 55 years, R/o Village- Sitagaon,
Police Station Aundhi, District- Rajnandgaon (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through: The Police Station Aundhi, District-
Rajnandgaon (C.G.)

---- Respondent

For Appellant : Mr. M.K. Bhaduri, Advocate.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

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 20.08.2010 passed by First Additional Sessions Judge, Rajnandgaon (C.G.) in Session Trial No. 82/2009, 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 8 years and fine of Rs. 500/- & R.I. for 1 year and fine of Rs. 500/- respectively with further default stipulations.
2. In the present case, prosecutrix is PW-1 who is daughter-in-law of the appellant/convict. The prosecutrix was married to one Sanjula Meshram in the year 2008 who is son of the appellant. She was living with her husband- Sanjula

Meshram, mother-in-law, father-in-law/ appellant and sister-in-law (Sister of husband). On 23.02.2009, she went to forest with her father-in-law/ appellant for collecting fire wood where the appellant forcibly committed rape on her and threatened her to kill if she will disclose this incident to anyone. Thereafter, the appellant repeatedly committed rape with the prosecutrix. On 14.06.2009, she came to her parental house and narrated the incident to her father & mother as well as villagers of parental village. Thereafter, report (Ex.P/1) was lodged and investigated and after completion of trial, the trial court convicted as mentioned above.

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

(i) The appellant has been falsely implicated due to personal vindict and loan transaction which took place between parents of the prosecutrix and the appellant.

(ii) The FIR is belated and there is no sufficient explanation of delay in lodging the FIR, therefore, version of the prosecution is doubtful.

(iii) The medical expert does not corroborate the incident, therefore, case of the prosecution is under cloud.

(iv) The prosecutrix did not complain anyone for a long time though, she had sufficient opportunity to disclose the fact, therefore, her version is not reliable.

- (v) The so called extra judicial confession made by the appellant is not legally admissible evidence, therefore, no reliance can be placed on it.
- (vi) Husband of the prosecutrix was prime witness to the incident but, he has not been examined by the prosecution though prosecutrix narrated the incident to her husband, therefore, adverse inference could be drawn against the prosecution.
- (vii) There is material contradiction and omission in the statement of the witnesses and conviction is a moral conviction which is not liable to be sustained.
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-1) deposed that her marriage was performed with Sanjula Meshram who is son of the appellant. She was living with the appellant, her husband, mother-in-law and sister-in-law. On 23.02.2009 she went to forest for bringing fire wood with the appellant in Kalangwahi Forest and in that forest, the appellant made her lie down in surface below one tree and committed rape on her. As per version of this witness, the appellant threatened her to kill if she will narrate the incident to anyone. She further deposed that she informed about the incident to her husband, but he did not

believe on her and on the contrary said that she is falsely bringing down reputation of his father. She further deposed that after 15 days, the appellant again committed rape on her. She further deposed that whenever no member of family was present in the home on any date, he committed rape on her. When it was unbearable to her, she came to her parental home where narrated story to her mother, father & brother. Villagers of the parental village gathered in which the appellant made extra judicial confession regarding rape against the prosecutrix. This witness has been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

6. Version of this witness is supported by version of Dayashankar (PW-2) who is father of the prosecutrix to whom she narrated the incident. This witness has also been subjected to incisive cross-examination, but is stable to his version. Mukesh Kumar Sahare (PW-3) is brother of the prosecutrix and he also confirmed that the prosecutrix informed him regarding rape by the appellant. He also deposed regarding threat given by the appellant to the prosecutrix. Krishna (PW-4) is a person who was present in the meeting organized on the parental village of the prosecutrix. As per version of this witness, the appellant made extra judicial confession regarding his crime against the prosecutrix.

7. Dr. Mohan Tikam (PW-7) examined the appellant and found him capable to perform intercourse. Baldev (PW-12) deposed that the prosecutrix informed him regarding rape by the appellant. This witness has also been subjected to searching cross-examination, but remain unshaken.
8. True it is that delay is caused in lodging report, 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 where father-in-law in whose custody the prosecutrix was living in the house, has committed rape on her. The husband has not supported the prosecutrix for the simple reason that he is also dependent on his father. He is not having guts to challenge the father. When no member of matrimonial home was supporting the prosecutrix, it is natural that she will try to get support of parental home. The prosecutrix informed the incident to her father and mother and thereafter, report was lodged.
9. 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 by father-in-law on such a manner. Obviously, the prosecutrix must have also gone through turmoil and after support of father and mother decided to lodge FIR. The delay in case of sexual assault that to by father-in-law cannot be

equated with case involved other offences. There are several factors in the mind of the prosecutrix before coming to the police station.

10. 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.
11. In the present case, the prosecutrix was able to lodge report only after support of father, mother and villagers otherwise she would not have courage to go alone to police station. 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.
12. Arguments advanced on behalf of the appellant that the appellant is falsely implicated on account of some loan transaction is without substance. 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.

13. In the present case, it is father-in-law who overpowered her and there is no reason for her to falsely rope her father-in-law for charge of commission of rape. From any angle, it cannot be said that report was lodged on account of any dispute of loan transaction.
14. True it is that husband of the prosecutrix has not supported her but the fact remains that he is first son of the appellant and then he is husband of the prosecutrix and he has chosen to be with father, therefore, his non-examination will not help the defence side.
15. 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 against her father-in-law. She has made a humiliating statement against her honour and against her father-in-law which cannot be seen with suspicion, this will aid to her injury, therefore, argument advanced on behalf of the appellant is not sustainable.
16. The case laws cited on behalf of the appellant in the matter of **Nandlal Yadav Vs. State of M.P.** reported in **2002 (2) MPLJ 376** and **Rajkumar & another Vs. State of M.P.** reported in **2001 (4) MPLJ 468**, are distinguishable in the facts and circumstances of the present case.

17. 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

18. The trial court awarded jail sentence of 8 years and fine of Rs. 500/- 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.
19. The appellant is reported to be on jail, therefore, no order for his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge