

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 49 of 2009**

Punauram Binjwar s/o Douram Binjwar, aged about 26 years, R/o Village Khadarhi, Nawadih, PS Bagbahra, District Mahasamund (CG)

---- Appellant

Versus

State of Chhattisgarh through Police Station Bagbahra, District Mahasamund(CG)

---- Respondent

For Appellant : Shri Tushar Dhar Diwan, Advocate on
behalf of Shri Prateek Sharma, Advocate
For Respondent/State : Shri Lav Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD**

22/11/2018

1. This appeal is preferred against the judgment dated 03.1.2008, passed by the 1st Additional Sessions Judge, Mahasamund (CG) in Sessions Trial No. 326/2003, wherein the said Court has convicted the appellant for commission of offence under Section 376 (1) of the I.P.C. and sentenced him to undergo R.I. for 10 years and to pay fine of Rs.2000/- with default stipulation.

2. In the present case, prosecutrix is PW5. As per the case of prosecution on 1.7.2003, the prosecutrix had gone to village Kharotkala to see Rathyatra where she stayed in her relative's home

and at about 10.00 pm, the appellant came there and took her forcibly from the house and committed rape on her.

3. Learned counsel for the appellant submits as under :

(i) As per version of the prosecutrix (para 4) she was watching dance up to 9.00 am with the wife of the appellant, therefore, taking her forcibly is a story which is improbable;

(ii) Though the prosecutrix deposed that she sustained injuries on her waist and back, but no injury was found while examining by the Doctor, therefore, version of the prosecutrix is not reliable;

(iii) There is animosity between the family of the prosecutrix and the family of the appellant, therefore, there is every possibility of roping him in a false charge;

(iv) No evidence regarding the age of the prosecutrix was produced, therefore, age of the prosecutrix is not established. There are material contradictions and omissions in the statement of the prosecutrix and other witnesses, but the trial Court has failed to consider the same in its true perspective, therefore, the finding of the trial Court is liable to be set-aside.

4. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on proper marshalling of oral and documentary evidence on record which is just and proper and the same is not liable to be interfered with invoking jurisdiction of appeal.

5. The prosecutrix has deposed before the trial Court that she had gone to see Rathyatra and the appellant forcefully taken her by pressing her mouth and thrashed her on the surface and committed rape on her. Version of this witness is supported by the First Information Report , which was lodged on 4.7.2003 at Police Station Bagbahra. In the F.I.R., name of the appellant and commission of rape by the appellant is clearly mentioned. Version of the prosecutrix is supported by the version of Dhansingh (PW6) to whom she narrated the story of rape. Again, she was examined by Dr. (Smt.) Asha Mishra (PW1) and found her hymen ruptured. Dr. C.S. Mishra (PW2) examined the appellant and found that he was capable to perform sexual intercourse. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

6. It is settled law that in cases of rape evidence of the prosecutrix alone is sufficient to establish the guilt. In a tradition bound society of the villagers, it is non-permissive. Normally, the women are reluctant to accept anything against their chastity, therefore, version of the prosecutrix should be treated as injured witness and looking to her testimony there is nothing to say that she has any grudge against the appellant to rope him in a false charge.

7. Though there is delay of 2 days in lodging the report, but in the F.I.R. it is mentioned that the report is lodged after consultation with the family members. Normally, the woman alone is reluctant in

lodging the report, which is going adverse to her family, therefore, the report was lodged after consultation with the family members and same is done in the present case. Therefore, delay of 2 days is properly explained and it is not a case where delay is fatal to the prosecution. There is no scope to say that it is a case of consent. The appellant has done the act all of a sudden without having any conversation with the prosecutrix therefore, it cannot be said that the prosecutrix was a consenting party in the present case. The trial Court has elaborately discussed the entire evidence and came to the conclusion that sexual intercourse was performed by the appellant against her will and without her consent and finding of the trial Court cannot be substituted by this Court. It is not a case where the trial Court has based the conviction on irrelevant or extraneous material. The judgment is based on relevant facts and there is nothing on record to interfere with the finding. The conviction of the appellant for the offence under Section 376 (1) of the IPC is hereby affirmed.

8. Heard on the point of sentence :

Offence under Section 376 (1) IPC is punishable with imprisonment for life. The trial court has awarded the sentence for R.I. for 10 years and fine of Rs.2000/- which cannot be said to be harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered with.

9. Accordingly, the appeal is liable to be and is hereby dismissed.

10. As per report of the jail authorities, the appellant has suffered full jail term after getting remission, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)

JUDGE