

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 282 of 2009

Govind Kol, S/o. Vishwanath @ Bissu Kol, aged about 30 years, R/o. Village-Tendupara, P.S. - Pendra, District – Bilaspur (C.G.)

---- Appellant

Versus

State Of Chhattisgarh, Through – Police Station – Pendra, District – Bilaspur (C.G.)

-----Respondent

For Appellant	: Mr. Yogendra Chaturvedi, Advocate
For Respondent/State	: Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

30/11/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge (F.T.C.), Pendra, District – Bilaspur (C.G.), in Sessions Trial No.33/2008 on 30.03.2009, convicting the appellant for the offence under Section 376 and 506 (Part-2) of the Indian Penal Code and sentencing him to under go R.I. for 7 years and fine of Rs.1000/- and R.I. for 3 months, with default stipulations.

2. The case of the prosecution is this that on 21.04.2008, the appellant by deceit took the minor prosecutrix (P.W.-1) to a lonely place i.e. agricultural field and then committed the offence of rape with her. It is alleged that the appellant also assaulted and broke one tooth of the prosecutrix and threatened to kill her, in case she narrates about the incident to any person. FIR was lodged on the same day. The prosecutrix was medically examined. Statement of the witnesses under Section 161 of Cr.P.C. were recorded by the Investigation Officer. On completion of investigation, charge-sheet was filed before the concerned Court.
3. Appellant was charged with offence under Section 376 of the Indian Penal Code and in alternative under Section 376/511 and Section 325 and 506-B of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 9 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. Three witnesses were examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable

and cogent evidence in support of the charge. It is also submitted that the appellant is in jail since the date of his arrest i.e. on 23.04.2018 and his application for suspension of sentence and grant of bail filed before this Court was rejected on 06.07.2009. Hence, it appears that the appellant has completed his sentence of imprisonment in jail.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Hence there is no room for interference in the impugned judgment, hence, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. Considered the deposition of the prosecutrix (P.W.-1). She had made unrebutted statement that the appellant had raped her and when she was tried to escape, the appellant had assaulted, injured and also threatened her. This witness has also stated about lodging of FIR (Ex.P-1). Balram (P.W.-2) has stated that he was immediately informed about the incident by his daughter, prosecutrix (P.W.-1). Similar is the statement of Sembati (P.W.-3), which supports the version of the prosecutrix (P.W.1).

9. Dr. Smt. J.S. Lakda (P.W.-7) examined the prosecutrix and she has opined vide her report, Ex.P-17 that the prosecutrix was not subjected to any sexual intercourse but on query being made, she replied that even in case where the hymen is found intact, sexual intercourse may be possible according to Modi jurisprudence, in her report, Ex.P-20.
10. Resultantly, after close scrutiny of all the evidence and discussion on it, it is found that this appeal is without any substance and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge