

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 300 of 2009

Judgment Reserved on 25-10-2018

Judgment delivered on 30-10-2018

- Nilkanth Yadav, aged about 46 years, son of Udai ram, resident of Komkadi (Naari) PS Kurud, District Dhamtari.

---- Appellant

Versus

- State of Chhattisgarh through PS Kurud, Dist. Dhamari (CG).

– Respondent

For Appellant	:	Mr. Y.C. Sharma, Advocate.
For Respondent/State	:	M. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 17-3-2009 passed by the Additional Sessions Judge (FTC), Dhamtari, District Dhamtari (CG) in Sessions Trial No. 46 of 2008 wherein the said Court convicted the appellant for the commission of offence under Section 376 (1) and 325 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.5000/- and RI for three years and to pay fine of Rs. 1000/- with default stipulations.

2. In the present case, prosecutrix is PW/1. It is alleged that on 2-7-2009 at about 9.30 pm when prosecutrix was doing the work of cleaning of utensils by sitting outside of the house, the

appellant came there, caught hold of the hand of the prosecutrix, forcefully took her inside the the court-yard/cattle shed and committed rape on her and threatened her with life on disclosing the matter to anyone. Prosecutrix disclosed the matter to her husband on his arrival. After the incident the appellant assaulted the husband of the prosecutrix who sustained grievous injuries. The matter was reported and investigated. After completion of the trial, the trial Court convicted and sentenced the appellant as mentioned above.

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

- i) The incident took place on 2-7-2008 whereas the report was lodged in Police Station on 4-7-2008, therefore, case of the prosecution is suspicious.
- ii) There is contradictory statement of the prosecutrix (PW/1) and her husband Mohit (PW/2) which was overlooked by the trial Court.
- iii) The trial Court failed to see the statement of prosecutrix (PW/1) in which she disclosed that at the time of incident she raised the alarm but nobody helped her whereas the house of her brother-in-law (Jeth) is adjacent to her.

- iv) The trial Court failed to consider the contradictory statements of PW/1 prosecutrix and her husband Mohit (PW/2) relating to work of land agent which discloses inimical relationship between the parties.
- v) Statements of children of the prosecutrix are not taken and opinion of the medical expert is not supporting the evidence of prosecutrix, therefore, finding of the trial Court is liable to be reversed.

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the lower court in which impugned judgment has been passed.

6. In the present case, date of incident is 2-7-2009 at 9.30 pm and report was lodged on 4-7-2009 at Police Station Kurud at about 8.30 pm in which name of the appellant and his act of rape are clearly mentioned. From the statement of the prosecutrix (PW/1) it is clear that she informed about the incident to her

husband and when he asked her to lodge the report at Police Station, she called her brother namely Santram who is resident of Jangaon while the incident took place in village Kokadi (Naari). From the version of prosecutrix (PW/), her husband namely Mohit (PW/2) and brother Santram (PW/6), it is clearly established that on saying of the prosecutrix, her brother Santram was called from village Jangaon and thereafter the matter was reported in Police Station.

7. As per version of Mohit (PW/2), prosecutrix informed him about the incident on the date of incident and again it was informed to brother of the prosecutrix on the same day. From the version of all these three witnesses delay of two days in lodging the report is properly explained. Delay is material only in those cases when delay is appearing to be for some concoction in story. In the present case, appellant is an elder brother of the husband of the prosecutrix who is well-known to the family. There is no reason for prosecutrix to rope him in a false charge and it is not a case where anything developed within two days, therefore, delay in the present case is not adversely affecting the case of prosecution.

8. As per version of prosecutrix, on the date of incident at about 9.30 pm her husband had gone to village Nawapara and at

the same time appellant came there and demanded sexual favour. Upon her denial he forcefully took her near cattle shed and after shutting her mouth he threw her into surface, removed her undergarments and then inserted his penis into vagina of the prosecutrix. Version of this witness is supported by version of Mohit (PW/2), Santram (PW/6) and Naresh Kumar (PW/4) to whom the incident was informed. Again, version of this witness is supported by Doctor Smt. Aaga Tripathi (PW/11) who examined the prosecutrix on 5-7-2008 at District Hospital, Dhamtari and found defused swelling seen in middle 2/3 of left arm and opined that tender on touch caused by hard and blunt object and it is caused within 2 – 3 days of the incident which shows that prosecutrix sustained injury during the course of incident. Again, Dr. Uma Shankar Navratan (PW/16) examined the appellant and opined that he was capable of performing intercourse. There is nothing in testimony of the prosecution witnesses which adversely affected the root of the case. It is settled law that minor contradictions and omissions which do not go to the root of the case are insignificant and same cannot be a ground for discarding the evidence of the prosecution. This court has re-assessed the entire prosecution evidence and has no reason to record contrary finding what is recorded by the trial Court.

9. One defence witness namely Satrugan (DW/1) is examined by the appellant before the trial Court who deposed regarding abusive words used by Mohit (PW/2) against the appellant. Version of this witness irrelevant in the present case which is based on charge of rape which is committed in secrecy, therefore, version of this witness is not relevant in deciding the main issue. Argument advanced on behalf of the appellant is not sustainable.

10. As per version of Mohit (PW/2), appellant assaulted him by club and he got unconscious and admitted in District Hospital, Dhamtari for medical treatment. This witness is subjected to searching cross-examination on this point, but he is firm on his statement. Version of this witness is supported by the version of Dr. Vijay Fulmaali (PW/9) who examined this witness on 5-7-2008 at Community Health Centre, Kurud and noticed the following injuries.

- i) Lacerated wound over forehead in the size of $\frac{1}{2}$ " x $\frac{1}{2}$ "
- ii) Lacerated wound over parietal region in the size of 2"x $\frac{1}{2}$ "
- iii) Skull cateno over right forearm near wrist .
- iv) Abrasion over right fore arm
- v) Skull cateno over iliac bone
- vi) Injury over left thigh.

11. As per version of this witness, Mohit (PW/2) was subjected to x-ray examination and after x-ray he found that there was linear fracture in occipital region on fore-head and found linear fracture in 4th & 5th ribs of injured Mohit which was grievous in nature. Version of this witness is unshaken during cross examination and there is no other expert's opinion contrary to this opinion and there is no reason to reject the opinion of this medical expert and on the basis of report of this medical expert it is established that the appellant caused grievous injury on the body of Mohit (PW/2) who was husband of the prosecutrix. Case of the appellant does not fall in any of the exception and his act is intentional in nature, therefore, it is a case that the appellant voluntarily caused grievous injury on the body of Mlohit and the act of the appellant squarely falls within mischief of Section 325 of IPC.

11. On over-all assessment, it is established that the appellant committed rape on prosecutrix which is an offence punishable under Section 376(1) of IPC and again he caused grievous injury on the body of husband of the prosecutrix which is an offence punishable under Section 325 of IPC for which the trial Court has convicted the appellant which is not liable to be interfered with by this court. Conviction of the appellant is hereby affirmed.

12. Heard on the point of sentence.

Looking to the cruelty of the appellant, first he ravished wife of his brother and then caused grievous injury on the body of his brother, it is not a case for reduction of sentence. The Trial Court is correct in awarding the sentence of ten years for offence under Section 376(1) of IPC and three years for offence under Section 325 of IPC. Sentence part is also not liable to be interfered with by this court.

13. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand cancelled. The trial Court will prepare super session warrant and issue warrant of arrest against him. After his arrest he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial Court to submit compliance report on or before 29th January, 2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju