

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 03-12-2018

Judgment delivered on 12-12-2018

CRA No. 993 of 2008

- Ganpat @ Gabbar s/o. Shyam Ratan Caste Satnami, aged about 21 years, r/o. Village Charoada Police Station Palari, District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Palari, District Raipur (CG).

---- Respondent

 For Appellant : Mr. H.P. Agrawal, Advocate
 For respondent/State : Mr. Vinod Tekam, Panel Lawyer

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 29-8-2008 passed by the 2nd Additional Sessions Judge, Baloda Bazar, District Raipur (CG) in Sessions Trial No. 10 of 2008 wherein the said Court has convicted the appellant for commission of offence under Section 376 (1) of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.10,000/- with default stipulations.

2. In the present case, prosecutrix is PW/1. As per version of prosecution, on 14-12-2007 at about 6.00 p.m., at village Charonda, prosecutrix went to collect paddy in agricultural

field where the present appellant committed rape on her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

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

- i) Prosecutrix sustained no external injury on her body and they have stated that she is effected from Polio but no medical certificate is produced in this regard.
- ii The trial Court has over looked the material omissions and contradictions in the statement of the prosecution witnesses, therefore, finding of the trial Court is liable to be set aside.

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

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

6. In the present case, prosecutrix is PW/1. As per version of this witness, on the date of incident she had gone to collect paddy in agricultural field and at the same time appellant reached there, removed her clothes and undergarments and committed rape on her. As per version of PW/4 Soga Bai who is mother of the prosecutrix, prosecutrix informed her about rape committed by the appellant. Version of this witness is supported by version of PW/3 Devdas who is father of the prosecutrix and PW/5 Anand Ram. Again it is supported by version of PW/10 Vikram Singh Ratre before whom the appellant made extra judicial confession regarding his guilt. All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence.

7. It is true that there is delay of two days in lodging the report at Police Station. Where report of rape is to be lodged many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of victim who has been criminally assaulted in such a manner. Obviously prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reasons for little delayed FIR. The delay in a case of sexual assault, cannot

be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.

8. After re-assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of prosecutrix and other witnesses. Again there is no material contradiction in the statement of the prosecutrix and other witnesses. Minor contradictions which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the prosecution.

9. Considering the facts and circumstances of the case, the court is of the view that the finding arrived at by the trial Court is based on proper marshaling of the evidence and this court has no reason to record a contrary finding. Offence of rape is punishable under Section 376 (1) of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

10. Heard on the point of sentence.

The trial Court awarded RI for seven years for offence of rape under Section 376 (1) of IPC which is minimum and same cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per report of the jail authorities, the appellant has suffered full jail term, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju