

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 933 of 2008**

- Rohit Kumar s/o. Banuram @ Puniram Nishad, aged about 32 years, r/o. Adsena, Police Station Kharora, District Raipur (CG).

---- Appellant

Versus

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

---- Respondent

For Appellant	:	Ms. Ashmiti Shrivastava, Advocate appears as Amicus Curiae
For respondent/State	:	Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****14-12-2018**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-8-2007 passed by 14th Additional Sessions Judge (FTC), Raipur, District Raipur (CG) in Sessions Trial No. 130 of 2007 wherein the said Court has convicted the appellant for commission of offence under Sections 376 (1) & 506 Part II of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.5,00/- and RI for one year and to pay fine of Rs.5,00/- with default stipulations.

2. In the present case, name of the prosecutrix is (PW/1).

As per version of prosecution, on 8-4-2007 when prosecutrix was all alone in her house and was cleaning utensils, at the same time appellant called her and when she denied the appellant came to her and dragged her to his home and thereafter he made her lay in the surface, undressed her, undressed himself and thereafter committed sexual intercourse with her without her consent and against her will. Prosecutrix informed about the incident to her parents and people of the locality. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

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

- i) There is material contradiction in the statement of the prosecutrix and other witnesses, but the trial Court trial overlooked the same.
- ii) The trial Court has not evaluated the evidence in its true perspective and came to wrong conclusion.
- lii) Version of the prosecutrix is not supported by the version of medical evidence, therefore, finding of the trial Court is liable to be reversed.

5. 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.

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

7. Prosecutrix (PW/1) deposed that she was all alone in her house on the date of incident from where the appellant called her but she denied. Thereafter, appellant came to her house, dragged her and took her to his house. She further deposed that the appellant made her lay on the surface, undressed her and thereafter undressed himself and committed intercourse by inserting his penis into her vagina and thereafter threatened her to kill. She informed about the incident to her parents who came latter in the evening. Version of this witness is supported by version of PW/2 Mayaram who is father of the prosecutrix and PW/3 Seetabai, who is mother of the prosecutrix, PW/4 Bhangteenj and PW/5 Kumari Bai, PW/7 Shyam Sunder Chowhan and PW/8 Tejram Pal. All the witnesses have deposed before the

trial Court that the incident is informed to them and thereafter the matter was reported. Version of the prosecutrix is supported by version of Dr. S.R. Banjare (PW/10) who examined the appellant and found him capable of intercourse. Again it is supported by FIR (Ex.P/1) which is lodged after two days of the incident i.e., on 11-4-2007 in which name of the appellant is clearly mentioned as culprit and his act of rape and threatening is also mentioned. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence. . The defence of the appellant is merely denial which is merit-less.

8. The statement of the prosecutrix is quite natural, inspires confidence and merits acceptance. In the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect. Evidence of the prosecutrix to be followed at par with an injured witness and when her evidence is inspiring confidence, no corroboration is necessary..

9. 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.

10. After 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, therefore, this court has no reason to substitute the contrary finding. Offence of rape is punishable under Section 376(1) of IPC and offence of threatening to kill is punishable under Section 506 Part II of IPC for which the trial Court has convicted the appellant and same is hereby affirmed.

11. Heard on the point of sentence.

The trial Court awarded RI for seven years for offence of rape under Section 376 (1) of IPC and RI for one year for offence of threatening to kill under Section 506 Part II of IPC which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

12. 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 and has been released from jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

udge

Raju