

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 185 of 2012**

Manoj Nayak, S/o Shri Jogi Nayak, 26 years, R/o Rampur, Kirandul District South Bastar Dantewada(CG)

---- Appellant

Versus

State of Chhattisgarh, Through: District Magistrate South Bastar Dantewada (CG)

---- Respondent

For Appellant : Mr. Keshav Dewangan, Advocate.

For State/respondent : Mr. Vinod Tekam, Panel Lawyer.

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

04/12/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 13.12.2011, passed by the Sessions Judge, South Bastar, Dantewada(C.G.) in Session Trial No. 224/2010, wherein the said court has convicted the appellant for commission of offence under Section 376 (1) of IPC and sentenced to undergo R.I. for 7 years and fine of Rs. 1500/- with default stipulation.
2. In the present case, prosecutrix is PW1. As per the case of prosecution on 3.6.2010 at about 2.00 pm, the prosecutrix was going towards Kirandul Bus stand along with her sister Ku.Madhuri and one Ku.Reshma Bharti. At that time the appellant reached there and afforded them lift in his vehicle towards Bus Stand. However, in the Bus Stand, 2 other girls boarded out whereas, the prosecutrix could not leave the vehicle. Thereafter, the appellant took her to a nearby forest

where he committed rape upon her in the vehicle itself. The matter was reported and investigated and after completion of trial, the trial court convicted and sentenced and appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) There was a dispute with respect to marriage of the appellant and his wife as they had performed love marriage and the prosecutrix was also admiring the appellant and was keen to marry him, but this aspect of the matter is lost sight of the trial Court.

(ii) Version of the prosecutrix has not supported by medical evidence as she had not received any external or internal injury, therefore, version of the prosecution is doubtful.

(iii) The prosecution story is wholly improbable that offence is committed on the backseat of the vehicle while mud stains were found on the apparel of the prosecutrix.

(iv) The trial Court has overlooked the material contradictions in the statements of the witnesses, therefore, finding of the trial Court is liable to be reversed.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshalling of evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. I have heard learned counsel for the parties and perused the record of the trial Court.

6. Prosecutrix PW1 has deposed before the trial Court that she was standing with Ku. Madhari and Reshma Bharti near Rampur Camp of Kirandul main road market. At the same time, the appellant came there sitting in a pickup vehicle and on his asking they boarded in the vehicle. The other 2 were de-boarded near the bus stand, but the appellant made her seated in the vehicle and thereafter, by removing her garments committed sexual intercourse with her against her will and without her consent. As per version of this witness, she narrated the incident to her mother and father and thereafter, report was lodged at Police Station Kirandul. Version of this witness is supported by the version of Ku. Madhuri (PW2) and Smt. Geeta Sona (PW3), who is mother of the prosecutrix to whom she narrated the incident. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
7. Version of this witness is supported by the version of Dr.K. Goutam (PW6) who examined the appellant and found him capable of doing intercourse and upon examination of his jeans-pant found some dot in the said apparel. Version of direct evidence and medical evidence is supported by FIR Ex.P1, which was lodged on the date of incident i.e. 30.6.2010, in which name of the appellant is mentioned as culprit and his act is also mentioned.
8. There is no delay in lodging the report though 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. Statement of the prosecutrix shall be treated as par as the victim of assault. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case by giving weightage to minor contradictions which do not go to the root of the case.

9. After reassessing the evidence, it is not found that the appellant has been falsely implicated in the case and there is no reason to disbelieve the evidence of the prosecutrix and other witnesses.
10. Considering the facts and circumstances of the case, this Court is of the view that there is no reason to substitute a contrary finding than the finding recorded by the trial Court. Offence of rape is punishable under Section 376 (1) IPC, for which, the trial Court has convicted and sentenced the appellant and same is hereby affirmed.
11. Heard on the point of sentence:

The trial court has awarded jail sentence of 7 years and fine of Rs.1500/- for commission of offence under Section 376 (1) of IPC and less than minimum cannot be awarded. Looking to the gravity of the offence, it cannot be termed as harsh,

disproportionate or unreasonable and the same is not liable to be interfered with. The 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 term of his jail sentence and has been released after getting benefit of remission, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
Judge